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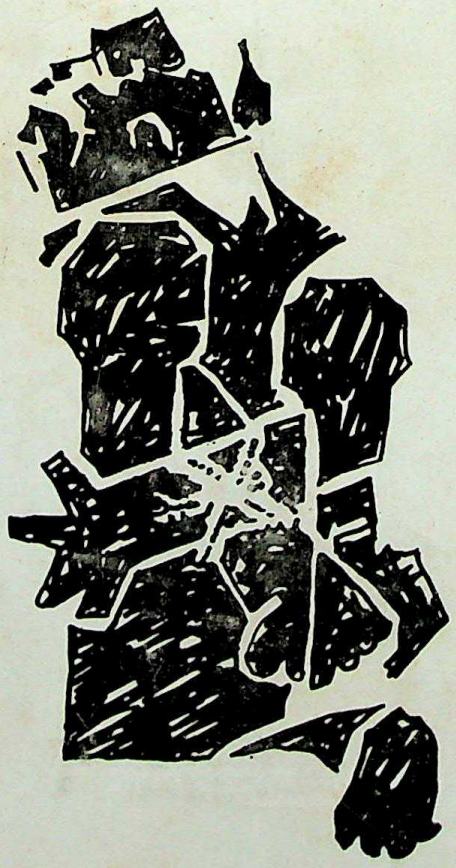
court procedure in ancient india

M K SHARAN



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COURT PROCEDURE IN ANCIENT INDIA

(on the basis of Dharmaśāstra literature)

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या देवी सर्वभूतेषु मातृरूपेण संस्थिता ।
नमस्तस्यै नमस्तस्यै नमस्तस्यै नमो नमः ।।

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To
my eldest brother
Sri Awadhesh Kumar Sharan
M.A., Ph.D., Dip. in F.A.V.E.
as a token
of
great regards and esteem

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Foreword

I had the privilege to go through the work COURT PROCEDURE IN ANCIENT INDIA by Dr. Mahesh Kumar Sharan, a reputed scholar in the field of Indology. The work depicts in vivid manner the legal organisations in Ancient India and presents an analytical study of the Hindu Law and customs. The main interest centres round the court of law and the procedure of law which is a subject of specialised technical nature and all details of it have been handled in authentic manner with copious references to original texts. Students of Law, as well as, Ancient Indian Polity and Culture will find this work a source book and a valuable guide.

I congratulate Dr. Sharan for compilation of this scholarly work which is the product of his painstaking research.

N. K. SAHU

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Preface

Scriptures of *Hindu* religion are numerous. They contain a very rich treasure of information about contemporary society in all fields of human relations and behaviour in the most desirable and standard form. For any specific social ruling a *Hindu* of today and even tomorrow will have to look back to the literary works of his forefathers to get a guideline.

Of late very much extensive has been the general study of research and investigation on them. Many aspects still remain unexplored. Very minutely I went through many of them but I could not be satisfied with the achievements of scholars in the specific field of judiciary of our forefathers. I made up my mind to attempt seriously for a comprehensive and authenticated account of judical system of our *Hindu* law-givers in all possible details together with some judicious derivatives out of other invaluable sources.

I took my Ph.D. degree on *Tribal Coins* from Magadh University in 1969 and the same University conferred on me D.Litt. degree on *Studies in Sanskrit Inscriptions of Ancient Cambodia* in 1973. Palaeography of *Tribal Coins* aroused in me an investigating curiosity for learning more and more about our past heritage. Sanskrit inscriptions of Ancient Cambodia which marvel even the best compositions at home and my subsequent visit to the countries of South East Asia gave me impetus to write this book.

The laws given by our *Hindu Dharmaśāstrakāras* did not remain enclosed in pages of their books. They were completely practised as per the minutest details prescribed. It is fascinating to note that a major portion of our Indian Penal Code and the criminal procedures come from them.

I have divided the work into the following six chapters, namely, contemporary judicial elements, judicial proceeding,

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evidence, trial, decision, and miscellaneous matters. To make the crimes of various natures and punishments of various intensities prescribed by the *Hindu* law-givers a little graphic and illustrative, I have added a few extra pages in Chapter 5 after punishments which present to the reader, at a glance, a clear view of the subject.

The book is mainly a research work which documents all important statements it makes and seeks to throw fresh light on several important and obscure points. The subject-matter, however, has been presented in a manner calculated to be attractive and intelligible to the general reader as well. It is, therefore, hoped the book will appeal both to the general reader and the scholar, as was the case with my books on *Tribal Coins—A Study*, *Studies in Sanskrit Inscriptions of Ancient Cambodia* and *The Bhagavadgītā and Hindu Sociology*.

Students, more often than not, make a blunder by relying too much on translations, which sometimes fail to convey the real sense of the original works on *Hindu* law. Foreign translators with all their research impute to a given passage a meaning intelligible to themselves but which was in fact never dreamed of by the writer himself. Oftentimes the sense and spirit are both lost. To avoid this lacuna, I have put the complete original and correct forms of the *Sanskrit ślokas* in the footnotes referred to in the law books so that the translation or interpretation mistakes may be compared and verified by the readers themselves.

I have naturally availed myself of the learned contributions of the eminent scholars. My indebtedness to their labours is incalculable. It is, of course, not claimed that I have been able to read everything written so far on the subject. I hope, however, that I have not missed any significant contribution made to the study by their important work.

Mahesh Kumar Sharan

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Acknowledgements

In preparation of this book my grateful thanks are, first and foremost, to my respected father late Sri Siabar Sharan, M.A., B.L., B.T. (1898-1977), who not only suggested this topic to me but very kindly provided me with all law books which he had preserved from the time of his law study in 1925. These books are rare and not available at present. Sitting at his feet this work was completed but he is now no more to see it in the printed form. However, I am confident, his blessings will ever be showered from above upon us all and particularly on this work in which he was so keenly interested.

Next my deep respect goes to my Guru Dr. Upendra Thakur, M.A., D.Phil. (Cal.), Professor and Head, Department of Ancient Indian and Asian Studies, Magadh University, Bodh-Gaya who in spite of his preoccupations, has been kind enough to take the trouble of perusing this work and whose heartful blessings, I am sure, are of immense help to me.

I am indebted to my Guru Dr. N.K. Sahu, M.A., Ph.D., D.Litt., Prof. and Head, Department of History, Sambalpur University, Sambalpur (Orissa) for his proffered advice and information and without whose constant assistance, guidance and encouragement, this work would not have been possible. Moreover, he has laid me under deep obligation by contributing Foreword to this volume.

I am most thankful to Dr. B.N. Sharma, M.A., Ph.D., D.Litt., F.I.A.S., F.R.A.S., Keeper, National Museum, New Delhi for his kind word of appreciation and who has ever been encouraging me for the publication of this book. My thanks are also due to the great scholars in the field from whose works I have benefited much in my present investigation. As regards the views, interpretations and opinions expressed in the present work as well as their shortcomings, the responsibility is entirely mine.

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For his encouragement and inspiration which are beyond appraisal, I express my sincerest gratitude to my eldest brother Subedar (Dr.) Awadhesh Kumar Sharan, M.A., Ph.D., Dip. in F.A.V. of the Army Educational Corps, without whose regular assistance and guidance this work would not have been possible. I dedicate this work to him for his most valuable time given to me at the time of the preparation of this volume.

I must express my gratitude to my two elder brothers Sri Suresh Kumar Sharan and Sri Ramesh Kumar Sharan, M.A., B.T., D.R.S. and two younger brothers Sri Dinesh Kumar Sharan and Sri Ashok Kumar Sharan for constant encouragement and help. I have also to acknowledge my debt to my wife Smt. Nirmala Sharan, B.A., who as usual kept me aloof from the household affairs and left me free to go on with my work.

To Prof. Dr. R.D. Narayan, M.A., Ph.D., Teachers Training College, Samastipur, I owe much for going through the manuscript. My hearty thanks are also due to Sri Akhilesh Kumar, M.Sc , who has very laboriously prepared the press copy of the manuscript.

It is difficult to express my deep sense of gratitude to Sri Ram Chandra Prasad, Dr. N.C Agrawala, Dean, Faculty of Commerce, Magadh University, Prof. Dr. S.K. Prasad, Prof. Murari Pathak, Dr. Rajiv Nain Prasad, Dr. P.C. Roy, Dr. Bishwanath Prasad, Principal, Gaya College, Dr. D.K. Banerjee and Prof. B.K. Sinha, Head, Deptt. of Commerce, R.K. College, Madhubani, who have helped me with their valuable suggestions.

I will gratefully acknowledge from readers valuable suggestions for improvement, corrections and additions for incorporation and inclusion in the next edition.

Saraswati Sadan
Gaya
15.12.77

Mahesh Kumar Sharan

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Transliteration Chart

अ	आ	इ	ई	उ	ऊ
a	ā	i	ī	u	ū
ए	ऐ	ओ	औ		
e	ai	o	au		
क्	ख्	ग्	घ्	ङ्	
k	kh	g	gh	ṅ	
च्	छ्	ज्	झ्	ञ्	
c/ch	chh	j	jh	ñ	
ट्	ठ्	ड्	ढ्	ण्	
t	th	ḍ	ḍh	ṇ	
त्	थ्	द्	ध्	न्	
t	th	d	dh	n	
प्	फ्	ब	भ्	म्	
p	ph	b	bh	m	
य्	र्	ल्	व्		
y	r	l	v		
श्	ष्	स्	ह्		
ś/sh	ṣ	s	h		
क्ष्	त्र्	ज्ञ्			
ks/ksh	tr	jñ			
(अनुस्वार)	(विसर्ग)				
ṁ	ḥ				

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List of Abbreviations

AIR	All India Report.
Āpastaṁba	*Āpastaṁba Dharmasūtra.*
Baudhāyana	*Baudhāyana Dharmasūtra.*
Bṛhaspati	*Bṛhaspati Smṛti.*
BI	Bibliotheca Indica.
Chap.	Chapter.
ERE	Encyclopaedia of Religion and Ethics.
Gautama	*Gautama Dharmasūtra.*
HDS	History of Dharma Śāstra.
HLP	Hindu Law of Procedure.
Kātyāyana	*Kātyāyana Smṛti.*
Manu	*Manu Smṛti.*
Nārada	*Nārada Smṛti.*
Pit. S.	*Pitāmaha Smṛti.*
PS	*Parāśara Smṛti.*
QJMS	Quarterly Journal of the Mythic Society, Bangalore.
Śānti	*Śāntiparva* of the *Mahābhārata.*
SBE	Sacred Books of the East.
Sm. Ch.	*Smṛti Chandrikā.*
Vaśiṣtha	*Vaśiṣtha Dharmasūtra.*
Viṣṇu	*Viṣṇu Dharmasūtra.*
VM	*Vyavahāramātṛkā* or *Vyavahāramāyukha.*
VP	*Vyavahāraprakāśa.*
Yājñavalkya	*Yājñavalkya Smṛti.*

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Introduction

It should be a matter of pride and satisfaction to a *Hindu* to know that his ancestors had scaled great heights not only in literature, philosophy and religion but had advanced very far in the domains of law. *Hindu* jurisprudence is essentially mixed with religion. The belief in the transmigration of souls that we reap the fruits of our own acts in all our lives, till we are rescued by perfect spirituality are the underlying principles which give tone to the whole system. Punishments can, thus, be avoided in this life but there is no escape from them in the next birth. Administrators of justice become sinners by maladministration.[1] These doctrines give the whole system a solemn and serious treatment. They cannot be passively and lightly dealt with.

In view of the above, it can be definitively said that the *Hindus* believe that *Hindu* law has originated from the Divine. Its primary source is the *Vedas* from which the Smṛtis and Saṁhitās have developed it into various codes which are all considered sacred. Law is believed to be the voice of the deity[2] and its ultimate objective is not merely general happiness but spiritual welfare. It does not emanate from the king. Rather it emanates from the king of all kings. All sacred and moral grandeur before which even the mightiest *Hindu* monarchs fell prostrate, was due to the belief of its divine origin.

The laws given by the *Ṛṣis* of the remote past favourably comparing with the procedure code of the modern civilized

1. *Manu*, VIII, 18
   पादां धर्मस्य कर्तारं पादः साक्षिणमृच्छति ।
   पादः सभासदः सर्वान्पादौ राजानमृच्छति ॥
   cf. *Vaśiṣtha*, XIX, 42 कृच्छ्रमदण्डयदण्डने पुरोहितः ॥
2. *Nārada* (Jolly, pt. I), p. 36 note 2.

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world is greatly charming. The rules of evidence were as complete and perfect as we find them today. The administration of justice was regular and the system was well defined as no aspect was left arbitrary, capricious or uncertain. Judiciary had the highest regard and supreme position. Even the king could not disregard the recognised system without incurring sin and condemnation and in some cases without penalty.[1] The system does not profess to be exhaustive. It is rather a system in which new customs and propositions may be engrafted from time to time according to circumstances and the progress of society.[2]

Besides this the whole procedure is completely indigenous and nothing has been imported into it from any other system whatsoever. It is absolutely original in nature and any resemblance between the *Hindu* law and the Roman law and for that matter any other system should be considered purely accidental coincidence. It is just possible that elements of *Hindu* law were adopted by the Romans through the Greek and Egyptian channels. The possibility of the adoption of legal procedure of other nations by the *Hindus* should be completely ruled out. Comparisons may be made, parallels may be drawn, similarities and differences may be pointed out and a comparative jurisprudence may be evolved but due care must be taken to ensure that no explanation comes from outside.

The study of judicial procedure, therefore, is not unimportant for modern times. Its study should not remain

1. *Manu*, VIII,
   18 पादौ धर्मस्य कर्तारं पादः साक्षिणमृच्छति ।
   पादः सभासदः सर्वान्पादौ राजानमृच्छति ॥
   127 अधर्मदण्डनं लोके यशोघ्नं कीर्तिनाशनम् ।
   अस्वर्ग्यं च परत्रापि तस्मात्तत्परिवर्जयेत् ॥
   128 अदण्ड्यान्दण्डयन्राजा दण्ड्यांश्चैवाप्यदण्डयन् ।
   यशो महदाप्नोति नरकं चैव गच्छति ॥
   336 कार्षापणं भवेद्दण्ड्यो यत्रान्यः प्राकृतो जनः ।
   तत्र राजा भवेद्दण्ड्यः सहस्रमिति धारणा ॥
2. Ibid., VIII, 41
   जातिजानपदान्धर्मान्श्रेणी धर्मांश्च धर्मवित् ।
   समीक्ष्य कुलधर्मांश्च स्वधर्मं प्रतिपादयेत् ॥

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limited to the personnel who take law as a legal profession. Although professional study is all very good in its way, the general culture should not be dispensed with. Mind must be broadened and liberalised through general study for which a wide range is available. Cooped up in a narrow care, one can see very little of the broad day light. Mere professional study cannot carry a man very far, he will remain a novice or quack if he does not widen his scope of knowledge. The present work, therefore, will definitely be taken as a valuable contribution to readable materials for those who have thirst and curiosity to know more and desire to enrich their store of knowledge.

Divergent views have been expressed as to the importance of the law of procedure in the early stages of legal evolution. One school of thought lays stress on the predominance of rules of procedure over rules of substantive law, to begin with. Sir Henry Maine observes:

> The progress of most societies towards a complete administration of justice was slow and gradual. The state at first interfered rather to keep order and see fair-play in quarrels than took them into its own hands. Excessive technicality is characteristic of ancient law.

The principal *Dharmaśāstra* contains only a few provisions which may be said to relate to judicial organisation or to adjective law. The earliest of them (*Gautama*), whose extant text is considered to be reasonably authentic and reliable lays down the duty of the king to administer justice, punish the guilty and protect his subjects. There are a few simple directions and a reference to justice being administered according to the *Vedas*, *Upavedas*, *Dharmaśāstras* and *Purāṇas*.[1] The portion grouped as chapter XIII of the *Gautama* begins with the declaration that in disputed cases, the truth has to be ascertained by means of witnesses. Then follow a few provisions about persons who can be witnesses and their obligation to speak the truth and some directions as to their examination. One significant passage says that witnesses may be examined by the king or by a *Brāhmaṇa* learned in the śāstras.

1. SBE, II, chap. XI.

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The Dharmasūtras give us only very scanty information as to the nature, constitution and working of the judicial bodies of the day. By way of explanation, Dr. Buhler has suggested a general principle underlying the composition of the Dharmasūtras in the following words:[1]

> Those points only fall primarily within the scope of the Dharmasūtras which have some immediate close connection with Dharma (the acquisition of spiritual merit). Hence, it sufficed for them to give general maxims for the fulfilment of the Guṇadharma of kings, the impartial administration of justice and to give fuller rules regarding the half religious ceremony of the swearing and examination of witness. Judicial technicalities like the determination of the legal value of written documents had less importance in their eyes and were left either to the *Deśa-Āchāra* (custom of the country) or to the *neeti* and *Arthaśāstra*.

The sources of our information for the present book are many and varied. Our primary sources are the several *Sūtra* literature, *Smṛti* texts, the standard commentaries on them and the digests on the different aspects of *Smṛti* law. A brief account of all the *Sūtra* and *Smṛti* literatures is given here in chronological order. The *Sūtra* and the *Smṛti* periods are spoken of together as the *Dharmaśāstra* age according to S. Vardachariar.[2]

Dharmasūtra		*Dharmaśāstra*	
1. Gautama	500	1. Manu	200 B.C.-100 A.D.
2. Baudhāyana	B.C.	2. Viṣṇu	100 A.D.-300 A.D.
3. Āpastamba	to	3. Yājñavalkya	do
4. Vaśiṣtha	300 B.C.	4. Nārada	100 A.D.-400 A.D.
		5. Bṛhaspati	300 A.D.-500 A.D.
		6. Kātyāyana	400 A.D.-600 A.D.

1. *Gautama-Dharmasūtra*

Gautama, as a personal name, is of very frequent occurrence in the *Vedic* literature. *Gautama* is a generic name. In the

1. SBE, XIV, Introduction XXVI.
2. *The Hindu Judicial System*, The Lucknow University, 1946, p. 2.

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Kathopaniṣada both *Naciketas*[1] and his father[2] are styled *Gautama*. In the *Chāndogyapaniṣada* there is a teacher *Hāridrumalā Gautama*.[3] But, the name is also found to signify a school of the *Sāmaveda*. Hence it is difficult to determine whether the work was composed by a single author or it arose in a *Vedic* school. A teacher named *Gautama* is mentioned in the *Lāṭyāyana-Śrautasūtra* and *Drāhyāna-Śrautasūtra* of the *Sāmaveda*. *Kumarila*, a commentator of the *Pūrvamīmāṁsāsūtra* testifies to the fact that *Gautama's* work used to be studied by the followers of the *Sāmaveda*. There are other indications which testify to the close connection of the *Gautama-Dharmasūtra* with the *Sāmaveda*. Chapter XVI of the *Dharmasūtra* has been taken almost bodily from the *Sāmavidhāna Brāhmaṇa*. The commentary on the *Caraṇavyūha* tells us that *Gautama* was one of the nine subdivisions of the *Rāṇāyanīya* school of the *Sāmaveda*.

The earliest reference to *Gautama* as a writer on *Dharma* occurs in the *Baudhāyana-Dharmasūtra*.[4] *Baudhāyana* points out the authoritativeness of usages peculiar to the north or the south and quotes *Gautama* as saying that it is wrong to hold that certain customs must be held authoritative in certain countries.[5] In another place *Baudhāyana* gives it as his view that a *Brāhmaṇa*, if he cannot make a living by teaching, officiating as a priest or by gifts, should earn his livelihood as a *Kshatriya* and quotes the views of *Gautama* as opposed to this.[6] The extant *Gautama* on the other hand teaches the same view as that of *Baudhāyana*.[7]

There are no evidences whatsoever that may enable us to determine the age of this work with any degree of certainty. All that we can do is to make an attempt to fix the upper and the lower limit of the age by examining the internal and

1. II, 4.15; II, 5.6.
2. I, 1, 10.
3. IV, 4.3.
4. BI, 2.7; II, 4.17.
5. *Gautama*, II, 20.
6. *Baudhāyana*, II, 2.69-70
   अध्यापन वाजनप्रतिग्रहैश्शक्तः क्षत्रधर्मेण जीवेत्प्रत्यनन्तरत्वात् ।
   नेति गौतमोत्युग्रोहि क्षत्रधर्मो ब्राह्मणस्य ॥
7. *Gautama*, VII, 4.7.

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external evidences respectively. The age of *Baudhāyana* ranges between 500-200 B.C. so that this fixes the lower terminus of the age of *Gautama*.

The *Gautama-Dharmasūtra* is written entirely in prose and it contains no verses either quoted or composed by the author himself. The language agrees far more closely with the standard set up by *Pāṇini* than the *Dharmasūtras* of *Baudhāyana* and *Āpastaṁba*. Besides the Vedic *Saṁhitās* and *Brāhmaṇas* this *Dharmasūtra* mentions the following works of *Upaniṣadas*, *Vedāṅgas*, *Itihāsa*, *Purāṇa*, *Upavedas* and *Dharmaśāstra*. According to *Haradatta* the *Dharmasūtra* has 28 chapters but the Calcutta edition adds one chapter on *Karmavipāka* after chapter 19. The present study is based on chapters 11 (*Rājadharma*), 12 (punishments for libel, abuse, assault, hurt, adultery and rape, theft in the case of the several *varṇas* and rules about the money lending and usury and adverse possession, special privileges of *Brāhmaṇas* as to punishments, payment of debts, deposits) and 13 (rules about witnesses, falsehoods when excusable).

2. *Baudhāyana-Dharmasūtra*

The extant *Baudhāyana-Dharmasūtra* is certainly later than *Gautama*. But it is difficult to determine the author of this work. The mention of *Kanva Baudhāyana* and of *Baudhāyana* as an authority at several places of the work tends to show that *Baudhāyana* was an ancient sage and not the author of this work. The assumption appears to be confirmed by the use of *bhagavāna* as an epithet of *Baudhāyana*. Some would say that this fact does not preclude the possibility of *Baudhāyana* having been the author of the work, because reference by the author to himself in the third person is but a common practice among the ancient Indian writers. Others may hold, on the analogy of the manuscript that the work might have been composed by a pupil of *Baudhāyana*. The fact, however, seems to be that the work belonged to a school of writers founded by *Baudhāyana*.

The extant *Dharamasūtra* does not appear to have come down in its original form. This assumption is based mainly on the following grounds: The major portion of the fourth *Praśna*

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is, unlike the other *Praśnas*, composed in verse; its last three chapters are entirely in verse. The style is quite different from that of the first two *Praśnas*. The tenth chapter of the third *Praśna* largely agrees with *Gautama's* chapter XIX. The sixth chapter of the third *Praśna* agrees closely with the chapter fortyeight of *Viṣṇu*. There are several repetitions in the first two *Praśnas*.

The *Dharmasūtra* is somewhat loose in structure and is not concise. In this *Dharmasūtra* we find the mention of all the four *Vedas* by name. *Baudhāyana* quotes very frequently the *Taittirīya Saṁhitā*, *Taittirīya Brāhmaṇa* and the *Taittirīya Āraṇyaka* etc.

3. *Āpastaṁba-Dharmasūtra*

This *Dharmasūtra* has been quoted from very ancient times as authoritative. About the original home and personal history of *Āpastaṁba*, little is known to us. It is difficult to say whether this *Dharmasūtra* was written by one person or it arose in a school. The age of this *Dharmasūtra* can be settled within only approximate limits. It is probably later than the *Gautama Dharmasūtra* and also the *Baudhāyana Dharmasūtra* and before 500 A.D. P.V. Kane assumes that the work probably originated at a time when Jaimini had founded his school of *Purvamīmāṁsā* and assigns it to a period between 600-300 B.C.[1] The *Āpastaṁba Dharmasūtra* stands in a peculiar relation to the *Purvamīmāṁsā*. It is the only *Dharmasūtra* that contains many of the technical terms and doctrines of the *mīmāṁsā*.

4. *Vaśiṣtha-Dharmasūtra*

The identity of *Vaśiṣtha* is doubtful in view of the fact that *Vaśiṣtha* itself refers to him. Even if the *Vaśiṣtha* of the manuscript be the same as the person to whow the *Dharmasūtra* is attributed, we cannot arrive at any positive conclusion, the date of the manuscript itself being still a subject of controversy and placed within extremely wide limits. This much, however, appears to be fairly certain about the date of the manuscript

1. HDS, I, p. 45.

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that, in its final form, it arose probably between the 2nd cent. B.C. and 2nd cent. A.D. In view of this, the opinion of Kane that *Vaśiṣtha* arose in the 1st cent. of the christian era seems probable.[1]

It contains almost the same subjects and is similarly composed in prose interspersed with verses and quotes largely from the *Ṛgveda* and other *Vedic Saṁhitās*. Among the *Brāhmaṇas*, the *Aitareya* and *Śatapatha* are frequently cited. Buhler is of the view that the home of the school to which the *Vaśiṣtha Dharmasūtra* belonged lay to the north of the *Narmadā* and the *Vindhya*.[2] The earliest work to refer to *Vaśiṣtha* as an authority on *Dharma* is *Manu*, saying that *Vaśiṣtha* allowed 1/80th of the principal as interest per month. The *Vaśiṣtha Dharmasūtra* chapter XVI deals with the administration of justice, king as guardian of minors, threefold *pramāṇas*, viz. documents, witnesses and possession, rules about adverse possession and about king's advisers, qualifications of witnesses, perjury condoned in certain cases.

5. *Viṣṇu-Dharmasūtra*

It is also called *Vaiṣṇava-Dharmaśāstra* and its origin is attributed to God *Viṣṇu*. Like *Vaśiṣtha Dharmasūtra* it is full of verses. But one feature which is peculiar to the *Viṣṇu Dharmasūtra* is that it professes to be a revelation by the Supreme Being. None of the other *Dharmasūtras*, according to P.V. Kane, so far described assumes this role.[3] The style is easy and somewhat diffuse. It presents hardly any ungrammatical forms.

The age of the work presents a perplexing problem. Some of the chapters undoubtedly contain material which is comparatively old and on a level with the ancient *Dharmasūtras* of *Gautama* and *Āpastaṁba*. Such are the chapters about *Rājadharma* and punishment. The *Viṣṇu Dharmasūtra* and the *Manu Smṛti* have at least 160 identical verses. It also contains quotations from all the *Vedic Saṁhitās* and from the *Aitareya Brāhmaṇa* and also mentions *Vedāṅgas*, *Vyākaraṇa*, *Itihāsa*, *Dharmaśāstra* and *Purāṇa*. This *Dharmasūtra* has

1. HDS, I, p. 56.
2. SBE, XIV, p. XVI.
3. HDS, I, p. 63.

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been quoted in many a later *Smṛti* digest and commentary but this does not help us materially in determining the lower terminus of its date with any degree of precision. *Yājñavalkya Smṛti* mentions *Viṣṇu* among the celebrated propounders of *Dharmasūtra*. While it is difficult to believe that the *Yājñavalkya* refers to the extant *Viṣṇu Smṛti*, it is equally difficult to account for the fact that certain verses are common to *Viṣṇu* and *Yājñavalkya*. The only conclusion that is warranted by the existing facts is that there was probably an earlier version of the work of *Viṣṇu* to which *Yājñavalkya* refers and which being too old, was forgotten and, therefore, adopted in the later version that exists today, the later redactor retaining some portions of the original work intact.

Here, the study is based on the duties of kings, punishments for various offences, debtors and creditors, sureties, three kinds of documents, witnesses, and general rules about ordeals etc. from this *dharmasūtra*.

6. *Bṛhaspati*

Bṛhaspati was known as ancient teacher of *Arthaśāstra*. He is said to have compressed it into 3000 chapters on *dharma*, *artha* and *Kāma* according to *Mahābhārata*. He wrote a *sūtra* work on *Vyavahāra* and other topics of *dharma* following the quotations contained in *Viśvarūpa* and *Haradatta*. The complete *smṛti* of *Bṛhaspati* on law has not yet been discovered.

He was probably the first jurist to make a clear distinction between civil and criminal justice. He divided the eighteen titles into two groups—those springing from wealth (14 titles) and those springing from injury to beings (4 titles). Like *Nārada* he lays down the rule that a legal decision should not be arrived at merely on the basis of *Śāstra* and that when a decision is devoid of reasoning, there is loss of *dharma*, for even a good man may be held to be bad one, what is good may be held to be sinful in a judicial proceeding, just as *Māndavya* was held to be a thief on a decision without thoughtful reasoning.[1]

1. *Aparārka* on *Yājñavalkya*, II, 1

केवलं शास्त्रमाश्रित्य न कर्त्तव्यो हि निर्णयः ।
युक्तिहीने विचारे तु धर्महानिः प्रजापते ॥
चोरोऽचोरो साध्वसाधु जायेत व्यवहारतः ।
युक्ति विना विचारेण माण्डव्यश्चौरतांगतः ॥

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He gives such elaborate definitions and rules about procedure from the filing of plaint to the passing of the decree that he can very well stand comparison with modern legislators on the same subjects. *Nārada* and *Bṛhaspati* both speak of three kinds of proof, four parts of a judicial proceeding, almost the same defects of plaints, four kinds of recovering debts, four kinds of *Sāhasa*. *Bṛhaspati* follows *Manu* very closely. These considerations make it clear that *Bṛhaspati* is certainly later than *Manu* and *Yājñavalkya*. Nothing can be said about his country. In a passage *Bṛhaspati* refers to the usages of the southern people, of the people in the *Madhyadeśa*, of the eastern and northern people. He compares *Vyavahāra* with *Yajña*, the king with *Viṣṇu*, the successful party with the sacrificer and the defeated party with the victim, the plaint and the reply to food and the *pratijñā* to the sacrificial offering, the *Śāstras* to the three *Vedas* and the *Sabhyās* to the priests in a sacrifice.[1]

7. *Manusmṛti*

Manu is spoken of as the father of mankind. A *vedic* poet prays that he may not be led away from the ancestral path of *Manu*.[2] The *Śatapatha Brāhmaṇa* gives us the story of *Manu* and the deluge. In the *Taittirīya Saṁhitā* and *Tāṇḍya-Mahā Brāhmaṇa* it is said 'whatever *Manu* said is medicine'. *Taittirīya Saṁhitā* also says that mankind is *Manu's*.[3]

It is almost impossible to say who composed the *Manusmṛti*. It goes without saying that the mythical *Manu* could not have composed it. It covers a wide field because in view of the doctrine of observance of *Swadharma*, it had to prescribe the duty of every *varṇa* and *āśrama* in society as it then existed. Having laid down the duties of first *varṇa*

1. *Vīramitrodaya*, p. 29
   यज्ञे संपूज्यते विष्णुर्व्यवहारे महीपतिः ।
   जयी तु यजमानोत्र जितः पशुरुदाहृतः ॥
   पूर्वपक्षोत्तरावाद्यं प्रतिज्ञा च हविः स्मृता ।
   त्रयी शास्त्राणि सभ्यास्तु ऋत्विजोदक्षिणादेन ॥
2. *Rgveda*, VIII, 30.3
   मा नः पथः पित्र्यान्मानवादधि दूरं नैष्टं परावतः ।
3. II, 1.5.6.

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(i.e. *Brāhmaṇa*) in all its *āśramas*, the author of the *Manusmṛti* turns to *dharma* of the next *varṇa* i.e. the *Kshatriya*. That he regarded the *Kshatriyas* as of equal importance with the *Brāhmaṇa* will be clear from chapter IX verses 319 to 322 where he advises harmony between the two commentaries. To the Kshatriya he permits the three *puruṣārthas* viz. *dharma*, *artha*, and *kāma* but he too is conscious of the difficulty of reconciling the three. In verses 151 and 152 of chapter VII he advises the king, during his leisure hours, to ponder over the realisation of *dharma*, *kāma* and *artha* which are mutually antagonistic. A different reading (परस्परा विरुद्धानां) has been adopted by some commentators, even this would only mean, 'how they could be realised without mutual antagonism'. It was only natural that the *Smṛti* should devote considerable space and attention to the duties of a king, not like *Kauṭilya*, with a view to increase the king's wealth and power by any means, but to show how a righteous king should conduct himself.

The *Manusmṛti* is divided into twelve chapters. Chapter VII is based on *rājadharma* and chapter VIII starts describing the king's role in the administration of justice, the whole chapter and the next chapter prescribe in detail the way in which the king and the *Sabhā* should deal with the various matters coming before the king in his judicial capacity.

8. *Yājñavalkya-Smṛti*

Among vedic sages the name of *Yājñavalkya* is one of the most illustrious. He is credited with having promulgated the white *Yajurveda*. This *Smṛti* is more systematic than that of *Manu*. He has divided the work into three sections and relegates all topics to their proper positions and avoided repetition. The *Nirṇayasāgar* edition of the *Yājñavalkya* contains 1010 verses, while the *Trivandrum* edition with the commentary of *Viśvarūpa* contains 1003 verses and *Anandāśrama* edition gives 1006.

The whole of the *Yājñavalkya Smṛti* is written in the classical *Anuṣṭubh* metre. The *Smṛti* stands in a very intimate relation to the white *Yajurveda* and the literature that clusters round it. Most of the *mantras* quoted or referred to by

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Yājñavalkya occur in the *Ṛgveda* as well as in the *Vājasaneya Saṁhitā*. *Yājñavalkya* agrees very closely with the *Viṣṇu-Dharmasūtra*. The *Smṛti* is divided into three *kāṇḍas*. *Kāṇḍa* II deals with the members of halls of justice, judge, definition of *Vyavahārapada*, rules of procedure, plaint, reply, means of proof—documents, witnesses, possession, title and possession, gradation of courts, witnesses, their qualification and disqualification, administering oath and punishments for perjury.

9. *Nārada Smṛti*

As *Nārada* is regarded as an authoritative *Smṛti* by *Viśvarūpa*, *Medhātithi* and other later writers and as *Asahaya*, who is mentioned by name in the commentary of *Viśvarūpa*, wrote a comment on *Nārada*, the *Nārada Smṛti* must be older by some centuries than the 8th century, the latest date to which *Asahaya* can be assigned.

Nārada is not referred to by *Yājñavalkya* in the list of ancient writers on *dharma*, nor does *Parāśara* mention him. Though *Nārada* is based on Manu, he differs in several essential matters from *Manu*. *Nārada* is later than *Yājñavalkya*. *Yājñavalkya* knows only five kinds of ordeals, while *Nārada* knows seven. The rules of judicial procedure in *Nārada* are more systematic and exhaustive than those of *Yājñavalkya*. This *Smṛti* contains three introductory chapters on the principles of judicial procedure and on the judicial assembly. Then follow the titles of law.

10. *Kātyāyana*

Kātyāyana, *Bṛhaspati* and *Nārada* form a coalition of three men in the realm of the ancient *Hindu* law and procedure. *Kātyāyana* appears to have taken *Nārada* and *Bṛhaspati* as his models in the order and treatment of the subjects to be dealt with in *Vyavahāra*. He is even in advance of these two writers in certain matters. He gives numerous definitions such as those of *Vyavahāra*, *prāḍavivāka* and *dharmādhikaraṇa* etc. He seems to have been the first to invent some new terms. For example, he defines *paścātkāra* as a judgment given in favour of the plaintiff after a hot contest between the plaintiff and the defendant, while the term *Jayapatra* is res-

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tricted by him to the judgment given on admission by the defendant or a judgment dismissing the suit on various grounds.

The date of *Kātyāyana* can be settled only approximately. He is certainly much later than *Manu* and *Yājñavalkya*. Hence his upper limit is the 3rd or 4th century A.D.

The following personalities are pioneers in the field of introducing to the world and also deciphering and nicely portraying the huge treasure of contemporary judicial elements and systems of our forefathers whose works are noted before for exhaustive study and necessary references for the facility of a researching scholar.

1. *Mahāmahopādhyāya—Dr. P. V. Kane*

His massive work entitled *HISTORY OF DHARMAŚĀSTRA* (Poona, 1930, 62—in five volumes) embraces far more than the *śāstras* itself. He has given excellent indexes to each volume. This voluminous work was translated into *Hindi* by Sri Arjun Chaube Kashyap and was published from Hindi Samiti Lucknow. Needless to say that these volumes are used as an encyclopaedia by any scholar who wants to write on any aspect of our judicial procedure.

2. *R. P. Kangle*

A great boost was given to the studies of Indian political theory by the discovery of *Kauṭilya Arthaśāstra*. Kangle's *THE KAUṬILYA ARTHAŚĀSTRA* (3 volumes, Bombay, 1960-1965) contains text, translation and notes in an excellent form.

3. *V. R. Dikshitar*

His books entitled *MAURYA POLITY* (Madras, 1932) and *GUPTA POLITY* (Madras, 1952) are landmarks in this field.

4. *A. S. Altekar*

His book *STATE AND GOVERNMENT IN ANCIENT INDIA* (Delhi, 1962) has the special merit of being the work of a fine historian.

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5. *B. A. Saletore*

His book *ANCIENT INDIAN POLITICAL THOUGHT AND INSTITUTION* (London, 1963) is a large compilation of opinions from earlier scholars.

6. *R. S. Sharma*

ASPECTS OF POLITICAL IDEAS AND INSTITUTIONS IN ANCIENT INDIA (Delhi, 1959)—This book contains studies of a rate high in point of information and originality.

7. *J. Gonda*

His work entitled *ANCIENT INDIAN KINGSHIP FROM THE RELIGIOUS POINT OF VIEW* (Numen 3, 1956) helps to adjust the balance in favour of politics and economy.

8. *J. C. Heesterman*

His book entitled *THE ANCIENT INDIAN ROYAL CONSECRATION* (The Hague, 1957) is a work portraying a lot of judicial system prevailing in ancient India.

For further reliable survey of ancient Indian political and judicial systems it is necessary to go through the following important works which give a fuller and detailed treatment of the subject:

1. Studies in Hindu Political Thought (Banaras, 1959) by V. P. Varma.
2. Political Theory of Ancient India (Oxford, 1964) by J. W. Spellman.
3. History of Indian Political Ideas (Oxford, 1959) by U. N. Ghoshal.
4. Evolution of the Smṛti Law (Vārāṇasī, 1972) by Shivaji Singh.
5. Dharmasūtras (Calcutta, 1962) by S. C. Banerjee.
6. Hindu Law and Custom (Delhi, 1975) by Julius Jolly.
7. Public Administration in Ancient India (Delhi, 1973) by P. Banerjea.
8. The Hindu Law of Procedure (Calcutta, 1913) by J. Kanjilal.

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CHAPTER ONE

Contemporary Judicial Elements

The Court

A court was a place where justice was judicially administered. Courts were called *Dharmādhikaraṇa*,[1] *Dharmasthāna* and *Dharmāsana*.[2] It was a tribunal duly constituted to administer justice and as such when in such session, the judge or the judges constituted a judicial tribunal.

The term *Vyavahāra* connotes a judicial procedure. In the procedure followed, when a certain case was filed each of the contending parties was expected to present an affidavit before the court or a registration-officer containing particulars of the year and the place and the nature of the offence etc.

The law-court was compared to the human body in which the king was the head, the chief judge was the mouth, the assessors were the arms etc. More accurately, the functions of the limbs or parts of a law court, which were ten in number, are thus defined:

> The chief judge (*Prāḍavivāka*) passes the judgment, the king inflicts the punishment, the assessors (*Sabhyās*) or judges (*Sabhāsadas*) investigate the merits of the case, the law-book furnishes the decree, gold and fire are used when ordeals are resorted to, the water is to refresh, the accountant (*Gaṇaka*) calculates the value of the disputed property, the scribe (*Lekhaka—Kāyastha*) records the proceedings and the court servants (*Puruṣa*) have to summon the accused, the assessors and the witnesses and hold both the parties in custody if they have given no surety.[3]

1. *Manu*, VIII, 1 & 23; cf. *Śukra*, IV, 5.44 & 46.
2. *Nārada*, I, 34.
3. *Bṛhaspati*, I, 4-10.

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The last three had only administrative duties. It was the duty of the *Gaṇaka* to count money or make calculations in respect of sums involved in the claims before the court. The *Lekhaka* had to reduce to writing the allegations of the parties and the statements of the witnesses. The *Puruṣa* (also called *Sādhyapāla*) carried out the orders of the *Sabhā* for summoning parties, witnesses and even members of the *Sabhā*; he also took charge of such of the parties as could not find sureties for their appearance. The *Puruṣa* was to be from the *Śūdra* caste (according to Vyāsa). The other two had to be proficient in their respective duties, but their caste was not indicated except by implication, as according to a text of *Vyāsa*, the *Gaṇaka* was required to be also conversant with the *Vedas*. This implies that he might be one of the twice born. There was not even this provision in respect of *Lekhaka*, but the *Smṛtichandrikā* says that by associating him with the *Gaṇaka*, the *Sūtrakāra* might have intended that even the *Lekhaka* must be a *Dvija*. The distinction might not have had much significance at a time when the knowledge of writing was not widespread. But it may be noted for what it is worth, that no caste qualification had been insisted on in the earlier books in respect of these two officials.

Vyāsa mentions also *Sādhyapāla*—the keeper of the property—a *Śūdra* who as a kind of beadle or executor of the verdict has to look after the execution of the judgment and the *Sabhāstara* who should hold discourses about morals (*dharmavākya*) for the edification of those who are present.

Yājñavalkya refers to judicial functionaries which acted almost like courts.[1] They were the king's functionaries, the village community, the guilds and the families. Each one that precedes is superior in administering justice among men. This has been explained almost similarly by *Nārada* also.[2]

For deciding cases both of civil and criminal nature, officers were appointed by the king. He appointed a lord over each village as well as lords for ten villages, lords for twenty villages, lords of a hundred villages and lords of a thousand

1. *Yājñavalkya*, II, 31.
2. Jolly, *Nārada*, Section VII, p. 6.

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villages. The lord of one village was subordinate to the lord of ten villages, the latter, to the lord of twenty and so on.

Each subordinate lord was duty bound to inform his immediate superior lord full details about the crimes committed in his village or villages. In towns there were superintendents of all affairs who were entrusted with the responsibility of personally visiting and supervising the system of justice at these levels. They had at their disposal services of spies who gave them information about the behaviour of all judicial officials in their districts. The king had a minister who kept a general control over the affairs of all the officials who were connected with the decisions of crimes committed in towns or villages.

In *Vedic* times, society was composed of patriarchal families. The *Gṛhapati* decided all matters of disputes of household. This *Gṛhapati* (head of the family) was considered very much independent. *Nārada* has gone to the extent of declaring him independent in his affairs equal to a king or a spiritual teacher.[1] *Manu* empowers a *Gṛhapati* to correct a wife, a son, a servant, a pupil and a younger brother (when they committed false) with a rope or the small shoot of a cane; but on the back part only of their bodies and not on a noble part by any means.[2] *Gautama* empowers teachers to correct their pupils.[3] For ignorance or incapacity they were to be punished with a small rope or a shoot of a cane. The teacher, however, was liable to be punished by the king if he struck with any other instrument.

We have noted the supremacy of a *Gṛhapati* in deciding domestic disputes of the household, and also the prescribed punishment by a teacher to his pupils. The *Kulas*, the *Śreṇīs*, the *Pūgas* were, similarly, almost autonomous in their powers of investigation and decisions of disputes in their own jurisdiction.

In the field of contemporary judicature, the *Gṛhapati* was the smallest court for judicious decisions in his family whereas the king of the country happened to be the uppermost and supreme court for all civil and criminal cases in his kingdom. He appointed judges and assessors who were empowered by

1. *Nārada*, I, 32.
2. Colebrooke Digest, Vol. II; *Manu*, XI, p. 324.
3. Ibid., p. 325.

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him to decide all matters of litigations. The above enumeration is in order of authority commencing from the lower to the highest. If the one failed, the next in authority could take up the matter and so on until the matter was taken up by the king himself.[1]

According to *Bṛhaspati*, a court of justice was of the following four kinds:[2]

(1) *Pratiṣṭhita* (stationary)	One established in a fixed place such as a town or village.
(2) *Apratiṣṭhita* (not stationary)	Not fixed in one place but moving from place to place as on a circuit.
(3) *Mudrita* (one furnished with the king's signet or royal seal)	The court of a judge appointed by the king who is authorised to use the royal seal.[3]
(4) *Śāsita* or *Śāstrita*	The court in which the king himself presides.[4]

The term *Mudrita* is significant. It shows that when the *Prāḍavivāka* presided, he had charge of the royal seal or ring to be used in summoning the defendant and probably also for authenticating the proceedings of the court. As only the king had power to inflict punishment and the *Prāḍavivāka* had a limited power in this behalf, but neither of them sat in the *Pratiṣṭhita* or *Apratiṣṭhita* courts, the *Smṛtichandrikā* draws inference that these two courts could only give a decision but not pass a sentence or a decree for money and that in *Sāhasa* cases they could not even give a decision. *Bṛhaspati* says that *Kula*, *Śrenī* and *Gaṇa* etc. could inflict *Vāgdaṇḍa*, *Dhīgdaṇḍa* and *Parityāga*.[5]

Prevailing courts of justice are enumerated in the following order:

(a) *The King*

Being the fountain source of all justice, the king was the

1. *Bṛhaspati*, I, 30.
2. Ibid., I, 2-3.
3. *Nārada*, I, 3, 16.
4. *Manu*, III, 24.
5. Vardachariar, S., *The Hindu Judicial System*, Delhi, 1946, p. 93.

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highest and ultimate tribunal both in civil and criminal matters. The court of justice in the capital was to be to the east of the palace and was to face in the east. He was the highest appellate court also. His decisions were always held as final and binding. Justice was to be primarily dispensed by him. *Smṛtis* and Digests insist that the king cannot dispense justice by himself alone but must do so with the help and guidance of others.[1]

The king's court was held at the capital and was presided over sometimes by the king himself, but more often by a learned *Brāhmaṇa* appointed for the purpose, who was known as *Adhyaksha* or *Sabhāpati*. The *Adhyaksha* who might have been originally selected for each particular occasion became in course of time a permanent officer of the state and held the position of chief justice of the empire. The king together with the *Prāḍavivāka* (chief justice) and three or four other judges (*dhāmikaḥ*), formed the highest court of justice. It was, however, the chief justice who in reality presided over the king's court, even when the king was present.

Nārada opines:[2] 'Attending to the dictates of the law-book, and adhering to the opinion of his chief justice let him (i.e. the king), try causes in due order, exhibiting great care'.

Bṛhaspati describes the respective duties of the different members of the king's court in the following words:

> The chief justice decides cause, the king inflicts punishments, the judges investigate the merits of the case and (he) should decide cases with the assistance of three members.

Yājñavalkya provides that the king wearing no gaudy dress or ornaments was to enter the Sabhā (the hall of justice) for looking into the cause of litigants, accompanied by learned *Brāhmaṇas* and ministers, proficient in statecraft, was to be free from hot temper and greed and decide according to the law laid down in the *Dharmaśāstras*.[4] Manu also opines that

1. *Manu*, VIII, 1-2.
2. *Nārada*, I (Legal procedure), 35.
3. *Bṛhaspati*, I, 6.
4. *Yājñavalkya*, II, 1

   व्यवहारास्नृपः पश्येद्विद्वद्विर्ब्राह्मणैः सह ।
   धर्मशास्त्रानुसारेण क्रोधलोभविवर्जितः ॥

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the king should repair to the hall of justice in the company of learned *Brāhmaṇas* and experienced councillors and courtiers and should examine the cases of complainants.[1]

The king was also advised not to begin with a law-suit himself because the fines were a lucrative source of income to him.[2] He must throw into water the money of those fines which were unlawfully imposed or he should give to the *Brāhmaṇas* thirty times that amount.[3]

The king's court should sit in an edifice situated in the middle of the fortress (*durga*) of the king, the court hall should be situated in the east and should be decorated with statues, pictures, idols, jewels, garlands and furnished with a throne.[4] The forenoon was considered to be the proper time for holding the court more accurately the time from the second to the four eighths of the day.[5]

The king was not to decide by himself but was to follow the advice of his judge though the responsibility even when he took advice was his.[6] *Nārada* says that the king had to abide by the view of the judge (*Prāḍavivāka mate sthitāḥ*).[7]

1. *Manu*, VIII, 1 ff

   व्यवहारान्दिदृक्षुस्तु ब्राह्मणैः सह पार्थिवः ।
   मन्त्रज्ञैर्मन्त्रिभिश्चैव विनीतः प्रविशेत्सभाम् ॥

2. Ibid., VIII, 23

   धर्मासनमधिष्ठाय सवीताङ्ग समाहितः ।
   प्रणम्य लोकपालेभ्यः कार्यदर्शनमारभेत् ॥

3. Ibid., IX, 244

   अप्सु प्रवेश्य तं दण्डं वरुणायोपपादयेत् ।
   श्रुतवृत्तोपपन्ने वा ब्राह्मणे प्रतिपादयेत् ॥

   cf. *Yājñavalkya*, II, 307

   राज्ञा डन्यायेन यो दण्डो गृहीतो वरुणायतम् ।
   निवेद्य दद्याद्विप्रेभ्यः स्वयं त्रिंशद्गुणीकृतम् ॥

4. *Bṛhaspati*, I, 19.
5. *Kātyāyana*, I, 19.
6. *Śukra*, IV, 5.6

   धर्मशास्त्रानुसारेण क्रोधलोभविवर्जितः ।
   स प्राड्विवाकः सामात्य स ब्राह्मण पुरोहितः ॥
   समाहितमतिः पश्येद् व्यवहाराननुक्रमात् ।
   नैकः पश्येच्च कार्याणि वादिनोः शृणुयाद्वचः ॥

7. *Nārada*, I, 35,

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The king's court, it seems, had two sorts of jurisdiction, namely, original and appellate. As an original court it tried all cases which arose within the boundaries of the capital. On its appellate side it was the highest court of appeal for all cases which were triable in the first instance by the inferior courts. The king's court also supervised the administration of justice throughout the country.[1]

Manu prescribes that the king fully dressed and with an undisturbed mind, after taking his seat in the hall of justice, should perform obeisance to the gods, the guardians of the (eight) quarters (*Indra* and others, as specified in *Manu*, VII, 4) and should then commence the work of looking into the legal business.[2] The transaction of legal business had four stages (from the king's or judge's point of view) viz. first receiving information from a person, then finding out under what title of law (*Vyavahārapada*) the information fell, then consideration of the pleadings of the parties and the evidence led by them and lastly the decision. When a litigant came before the court at a proper time (i.e. when the court was sitting) and made him bow, he (the king or judge) should address him as follows:

> What is your business? What is the injury done to you? Don't be afraid, speak out, man. By whom, when, where and why (was the injury caused)? When thus asked whatever he replies should be considered by (the judge) with the *Sabhyās* and *Brāhmaṇas* and if the matter be legally entertainable (the judge) should deliver the seal (sealed order) to the plaintiff or order the bailiff to summon (the defendant).

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These observations are made by Kātyāyana (86-88). Whatever a man, being excited by one of the emotions of love (or anger or greed), said before the court, was to be first written down on a board or the like by the scribe.[3]

When a matter was dealt with by the *Sabhā* in the presence of the king, he was ordinarily expected but was not bound to accept the opinion of the *Sabhā* and of the *Prāḍavivāka*. As

1. *Bṛhaspati*, I, 10.
2. *Manu*, VIII, 23.
3. *Nārada*, II, 18.

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an appellate authority, the king had a special position. Where miscarriage of justice had taken place or was alleged to have taken place before the court, the king had a threefold responsibility:

(i) he had to look into the matter himself and give redress to the aggrieved party,
(ii) he had to punish the officers and *Sabhyās* responsible for the miscarriage of justice, and
(iii) if a suitor made an unfounded allegation that justice had not been done to him, the king must punish him.

Yājñavalkya declares that the impartial administration of justice yielded the same rewards as solemn vedic sacrifices did. In this way administration of justice was held to be a very sacred duty.[1] *Manu* declares that a king who punished those that did not deserve to be punished and who did not punish those that deserved punishment incurred great obloquy and went to hell.[2]

Śukra says:[3]

If a king decides (a case) by his own fiat where there is a text (of the *śāstra* applicable to it) it leads him away from heaven, it causes ruin to the people, it brings danger (to the king) from the armies of his foes and it strikes down the roots of (long) life, therefore a king should decide the causes of people according to the rules of *śāstras*; but in the absence of *smṛti* texts, he should carry out (judicial administration) according to the usages of the country.

1. *Yājñavalkya*, I, 13, 359-360
   यो दण्ड्यान्दण्डयेद्राजा सम्यग्वध्यांश्चवध्यातयेत् ।
   इष्टं स्यात्क्रतुभिस्तेन समाप्तवरदक्षिणैः ॥
   इति संचिन्त्य नृपतिः क्रतुतुल्यफलं पृथक् ।
   व्यवहारान्स्वयं पश्येत्सभ्यैः परिवृतोऽन्वहम् ॥
2. *Manu*, VIII, 128.
3. *Sukra*, V, 5.10-11
   आचरात्तं दुरात्मानं वशे कुर्वन्ति रात्रवः ।
   अस्वर्ग्या लोकनाशाय परानीक भयावहा ॥
   आर्यबीजहरी राज्ञामस्ति वाक्ये स्वयंकृतिः ।
   तस्माच्छास्त्रानुसारेण राजा कार्याणि साधयेत् ॥

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How the king directly dispensed justice is illustrated by the rules of *Gautama*[1] and *Manu*[2] that a thief who had stolen a *Brāhmaṇa's* gold might run with dishevelled hair to the king carrying iron club or a heavy bludgeon of *Khadirā* wood, might declare the sin committed by him and request the king to award punishment, that the king might then strike him with the club and that whether the thief died or lived after the king had struck him, he became free from the guilt.

Next to the king's court were the principal courts held in the important centres and in the larger towns forming the headquarters of districts or sub-districts.[3] The constitution of these courts was very similar to that of the king's court. Royal officers, assisted by persons learned in the law, administered justice in these courts. They were presided over by *Adhyakshas* appointed by the central government. They had original jurisdiction in respect of all cases arising within the boundaries of the towns in which they sat, and also of the more important civil and criminal cases occurring in the neighbouring villages. It seems that they had a sort of appellate jurisdiction over the decisions of the lower courts within the districts or sub-districts of which the towns formed the headquarters.

These courts tried both civil and criminal cases. The *Smṛti* works do not draw any distinction between civil and criminal courts. But *Kauṭilya* mentions, besides the ordinary law courts, a class of courts for the removal of the thorns of the state—*Kaṇṭakaśodhana*. These latter were, what may be called administrative courts. They were presided over by three officers of state and dealt with offences which affected not so much the rights of individuals as the interests of the community and interfered with the proper government of the realm.

(b) *The Prāḍavivāka*

He was the chief justice of the *dharmādhikaraṇa* and was to be well-versed both in substantive law as well as in the

1. *Gautama*, XII, 40-42.
2. *Manu*, VIII, 314-316.
3. *Arthaśāstra*, Bk. II, ch. 36.

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law of procedure. He was to be a master in the sacred as well as in the customary law.[1] In the *Dharmaśāstra* scheme of judicial organisation, the *Prāḍavivāka* is the most important figure in what may be called the king's justice, i.e. justice administered by or under the authority of the king.

(c) *The Bench*

Manu has given a ruling that the king desirous of investigating law cases must enter his court of justice together with *Brāhmaṇas* and experienced councillors.[2] And, alternatively if the king did not personally investigate the suits, he should appoint a learned *Brāhmaṇa* to try them.[3] This learned *Brāhmaṇa* was supposed to enter that most excellent court accompanied by three assessors and fully consider all cases brought before the king.[4] This was called a bench.

(d) *The Brahma Court*

This was a court where three Brāhmaṇas versed in the *Vedas* and the learned judge appointed by the king sat down to decide cases.[5] It was considered to be the best constituted court.

The Popular Court

Speaking of ancient India, Lee observes, 'the Royal system did not harmonize with the spirit of the day. The villagers had a judicial system of their own at once familiar to and respected

1. Altekar, A.S., *State and Government in Ancient India*, Delhi, 1959, p. 248.
2. *Manu*, VIII, 1
   व्यवहारान्दिदृक्षुस्तु ब्राह्मणैः सह पार्थिवः ।
   मन्त्रज्ञैर्मन्त्रिभिश्चैव विनीतः प्रविशेत्सभाम् ॥
3. Ibid., VIII, 9
   यदा स्वयं न कुर्यात्तु नृपतिः कार्यदर्शनम् ।
   तदा नियुञ्ज्याद्विद्वांसं ब्राह्मणं कार्यदर्शने ॥
4. Ibid., VIII, 10
   सोऽस्य कार्याणि संपश्येत्सभ्यैरेव त्रिभिर्वृतः ।
   सभामेव प्रविश्याग्र्यामासीनः स्थित एव वा ॥
5. Ibid., VIII, 11
   यस्मिन्देशे निषीदन्ति विप्रा वेदविदस्त्रयः ।
   राज्ञश्चाधिकृतो विद्वान्ब्रह्मणस्तां सभां विदुः ॥

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by them; the various traders and guilds had a similar system. The presiding officer of the popular courts or the guild courts had office either by election or inheritance according to local custom. With him were associated three or five men. In these apparently private courts were settled the affairs of the every day life. In case of grave crimes or when the condemned party refused to obey the judgment of the local court, the court of the king was concerned with litigation.'[1]

Yājñavalkya refers to three types of popular courts such as *Pūga*, *Śreṇī* and *Kula*.[2] His commentator *Vijñāneśvara* expressly describes them as agencies of adjudication other than the official ones.[3] These same courts are mentioned in the same order by *Bṛhaspati* who points out that an appeal would be to the *Śreṇī* court from the decision of the *Kula* court and to the *Pūga* court from the decision of the *Śreṇī* court. "A case tried in the city court goes on appeal to the king i.e. the king's court, but there is no appeal from the decision of the king whether the decision be right or wrong."[4]

Each village had its local court, which was composed of the headman and the elders of the village. Such courts decided minor criminal cases such as petty thefts, as well as civil suits of a trifling nature, like disputes relating to the boundaries of lands situated within the village. Their powers, it seems, were limited to the transfer of the possession of property and the inflicting of small fines. Decisions in the courts were given in accordance with the opinion of the majority of honest persons composing the courts. The idea of a system of local courts for the disposal of cases seems to have been firmly rooted in the minds of the people.

1. Historical Jurisprudence, p. 141.
2. *Yājñavalkya*, II, 30

   नृपेणाधिकृताः पूगाः श्रेणयोऽथ कुलानि च ।
   पूर्वं पूर्वं गुरुं ज्ञेयं व्यवहारविधौ नृणाम् ॥
3. राजसभातोनिर्णयिकान्तरमाह याज्ञवल्क्यः ॥
4. *Nārada*, I, 111

   ग्रामे दृष्टः पुरे याति पुरे दृष्टस तु राजनि ।
   राज्ञा दृष्टः कुदृष्टो वा नास्ति पौनरभवो विधिः ॥

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The *Śukranīti* says:[1]

> They are the best judges of the merits of a case who live the place where the accused person resides, and where the subject matter of the dispute has arisen.

Bṛhaspati goes so far as to recommend that:[2]

> For persons roaming in the forest a court should be held in the forest, for warriors in the camp, and for merchants in the caravan.

And it seems that this recommendation was, at least on some occasions, carried into effect for the convenience of suitors.

Prevailing popular courts of justice are enumerated in the following order:

(a) *Pūgas*

These *Pūgas* were of communities residing either in villages or in towns. They comprised of persons dwelling in the same place irrespective of their castes or employments. They were competent to decide cases in which the local public were interested. The *Pūga* court of *Yājñavalkya* consisted of members belonging to different castes and professions but staying in the same village or town.

(b) *Śreṇīs* (guilds)

This was a corporation or association of persons engaged in similar pursuits. Merchant-guilds were the most important. Modern friendly societies and trade unions have analogous functions and bear almost a historic origin from the *Śreṇīs*.

The term *Śreṇī* was used to denote the courts of guilds, which became a prominent feature of the commercial life in ancient India. The *Mahābhārata* gives a glorious description of the guild chiefs assembled in the coronation of king *Dharma*.

People of the *Śreṇīs* belonged to the same caste as a rule but they could also come from different castes. *Śreṇīs* were

1. *Sukra*, IV, 5.24
   राजा तु धार्मिकान् सभ्यात् नियुञ्ज्यात् सुपरीक्षितान् ।
   व्यवहारधुरं वोढुं ये शक्ताः पुङ्गवा इव ॥
2. *Bṛhaspati*, I, 25.

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competent to decide matters relating to their special callings or trade. When the effort at family arbitration failed, the matter was taken to the *Śreṇī* court. *Śreṇīs* had their own executive committees of four or five members and it is likely that they might have functioned as the *Śreṇī* courts also for settling the disputes among their members. Though mentioned for the first time by *Yājñavalkya* the *Śreṇī* court might well be placed a few centuries earlier.

(c) *Kulas*

This was a meeting of persons collectively related by blood as of a family or tribe. They could also be related distantly by marriage. All social matters concerning that particular community could be investigated and decided at this level. *Kula* court has been defined by the *Mitākṣharā* as consisting of a group of relations, near or distant. *Kulas* or joint families were often very extensive in ancient India; if there was a quarrel between two members, the elders used to attempt to settle it.

This court was the informal body of family elders or alternatively, it may have been a court taking cognisance of quarrels arising in family units of ten, twenty or forty villages.

(d) *Pariṣada*

This was supposed to be an ecclesiastical council of learned men competent to try.[1] Among the bodies whose names occur in *Vedic* literature, three may be especially mentioned: *Pariṣada, Samiti* and *Sabhā*. The aulhors of the *Vedic Index* say that in the Upaniṣadas, Pariṣada denotes an assembly of advisers on questions of philosophy. But, in later literature, the word denotes not only a body of advisers on religious topics but also the assessors of a judge or the council of ministers of a prince.

There has been difference of opinion as to whether *Samiti* and *Sabhā* meant the same thing or not. Macdonell and Keith say:

1. *Yājñavalkya*, I, 9.

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It is reasonable to assume that the business of the *Samiti* was general deliberation on policy of all kinds of legislation (so far as the *Vedic Indians* cared to legislate) and also judicial work.

They doubt whether even in the *Samiti* 'much attention was paid to the views of the common man'. The *Sabhā* was, in their opinion, an assembly of *Brāhmaṇas* and rich patrons, it was a kind of village council. It must have met frequently for the administration of justice. *Sabhāsada* was a technical description of the assessors who decided legal cases in the assembly.

The *Vedic* commentator *Śāyana* takes *Sabhā* to be an assembly of learned men and the *Samiti* to be an assembly of fighting men.[1] The *Samiti* was the popular assembly which could be attended by all, irrespective of rank, class or wealth. According to Mr. A.C. Das 'the *Samitis* must have been convened on special and important occasions, the *Sabhās* were probably local and permanent institutions'.[2]

Dr. R.C. Majumdar thinks that the *Samiti* was the central assembly while the *Sabhā* was the local assembly. Dr. K.P. Jayaswal opines that the *Samiti* was a national assembly of the whole people, a sovereign body electing the king and discussing matters of state. The *Sabhā*, he thinks, was perhaps a standing body of select men under the authority of the *Samiti* and it was the national judicature. The *Samiti* does not appear to have survived the vedic period. The *Sabhā* became the main judicial institution in the scheme of the *Dharmaśāstras*.[3] Bodies like the *Paura*, *Jānapada* etc., of the post-vedic times need not detain us, because whatever their political importance, they seem to have had no connection with the judicial system.

Relying on a passage from the *Śukranīti*, Dr. R.K. Mukerji observes: 'the principle underlying these lower and local courts is that in cases of dispute, the best men of the locality concerned, can alone be the proper judges'.[4]

1. *Dharmakoṣa*, I, p. 22.
2. Ṛgvedic Culture, p. 123.
3. Cambridge History of India, I, pp. 96 & 133.
4. Local Governments, p. 135.

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(e) *Madhyastha*

This could either be a body of several persons or constitute a single man chosen by agreement of parties to decide a dispute between them.

In regard to concerns to partnership, partners were declared to be arbitrators and witnessses for one another in doubtful cases of deceit, provided they bore no enmity to each other.[1] This shows that there were matters which could be settled by partners themselves acting as arbitrators.

Manu,[2] *Nārada*[3] and *Bṛhaspati*[4] suggest that disputes regarding landed property or boundaries should be decided by the neighbours, the inhabitants of the town or village, the other members of the same community and the senior inhabitants of the district. These disputes could be decided also by those living outside on the outskirts of the village and who lived by the tillage of field situated there. The decision of such cases could also rest with herdsmen, bird catchers, hunters and other inhabitants of the forest.

The work of the regular courts was greatly lightened by arbitrators. All cases except those concerning violent crimes, could be decided by arbitration by guilds of artisans, assemblies of cohabitants, meetings of religious sects and by other bodies duly authorised by the king.[5]

Nārada is a great believer in the system of arbitration, and he says:

> In disputes among merchants, artisans or the like persons and in disputes concerning persons subsisting by agriculture or as dyers, it is impossible for outsiders to pass a sentence and the passing of the sentence must, therefore, be entrusted to persons acquainted with such matters in a cause of this sort.

His system had the great merit of giving substantial justice to the disputants and, at the same time, preventing ruinous litigation.

1. *Bṛhaspati*, XIV, 6.
2. *Manu*, VIII, 258, 260.
3. *Nārada*, XI, 2, 3.
4. *Bṛhaspati*, XIX, 8, 9.
5. Ibid., I, 28, cf. *Śukra*, IV, 5.

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The relations subsisting between the different kinds of courts are thus described by *Bṛhaspati*:[1]

> When a cause has not been (duly) investigated by (meetings of) kindred, it should be decided after due deliberation by companies (of artisans); when it has not been duly examined by companies (of artisans), it should be decided by assemblies (of cohabitants); and when it has not been (sufficiently) made out by such assemblies (it should be tried) by appointed (judge).

And again:

> Judges are superior in authority to (meetings of) kindred and the rest, the chief judge is placed above them; and the king is superior to all, because he passes just sentences.

Nārada[2] and *Yājñavalkya*[3] also describe these relations in terms almost identical with those used by *Bṛhaspati*.

The regular courts met once or twice every day, usually in the mornings and evenings. The court house was looked upon as a sacred place and it was open to all. Trials were always held in public. The *Śukranīti* says:[4] "Neither the king nor the members of the judicial assembly should ever try cases in private." Cases were taken up for disposal either in the order of their respective applications, or of their urgency, or of the nature of the injury suffered, or of the relative importance of the castes of suitors. The royal officers were strictly forbidden to take any part either in the commencement or in the subsequent conduct of a suit.

Manu is very emphatic on this point. "Neither the king", says he, "nor any servant of his shall cause a law-suit to be begun or hush up one that has been brought before the court

1. *Bṛhaspati*, I, 30.
2. *Nārada*, I, 7
   कुलानिश्रेणयश्चैव गणाश्चाधिकृतो नृपः ।
   प्रतिष्ठा व्यवहाराणाम् पूर्वेभ्यस तूत्तरोतरम् ।।
3. *Yājñavalkya*, II, 30.
4. *Sukra*, IV, 5, 6
   समाहितमतिः पश्येद्व्यवहाराननुक्रमात् ।
   नेकः पश्येच्च कार्याणि वादिनोः श्रृणुयाद्वचः ।।

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by some other person."[1] It is not very clear whether this rule was confined only to civil suits, or applied to criminal cases as well. But it is probable that in the graver criminal offences the state took upon itself the duty of conducting the prosecution.

Court Fees and Fines

There were no court fees levied and no strict technicality was laid down. In all cases, the principal aim was substantial justice.[2] In ancient India it appears that in disputes of a criminal nature no court fees had to be paid. The person found guilty had to pay to the king the fine declared in the *Smṛtis* for offences or awarded by the court. As regards civil disputes also nothing had to be paid at the inception of the suit. Certain rules are prescribed by *Kauṭilya*,[3] *Yājñavalkya*, *Viṣṇu*, *Nārada* and others about payments to the king after the suit was decided. The payments were regarded court fees.

Not only the numerous and considerable fines (*daṇḍa*) were a lucrative source of income to the kings and their judges but fees too were imposed on the defeated party to meet the expenses of the court. Thus according to *Viṣṇu* fees to the amount of 10 and 5 per cent of the disputed sum had to be paid by the debtor and the creditor respectively.[4] The fine

1. *Manu*, VIII, 43

   नोत्पादयेत्स्वयं कार्यं राजा नाप्यस्य पूरुषः ।
   न च प्राणितमन्येन ग्रसेदर्थं कथंचन ॥

2. "The fee for hearing and deciding upon causes was, no doubt, charged, and collected in cash, also in medieval and ancient India, but not in advance. The judge then received his *etlak, chauth* or *pachotra*, a perquisite of his office, only after the amount decreed by him was recovered from the judgment-debtor. This practice was abolished in India, at the close of the 18th century, by Warren Hastings and replaced by the present system of court fee stamp by Sir John Shore in 1797." Dubey, H.P.—A Short History of the Judicial Systems of India and Some Foreign Countries, Bombay, 1968 (Preface).
3. *Arthaśāstra*, Bk. III, ch. 1.
4. *Viṣṇu*, VI, 20; cf. *Yājñavalkya*, II, 42.

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which a complainant or an accused or one who performed an ordeal had to pay if convicted of treachery, was equal or twice the disputed sum.[1]

According to another view indeed only the debtor had to pay a fine, which was doubled if he denied the debt and he was then convicted.[2] Also the *Brāhmaṇa* who prescribed penance for a murder received a bull as his fee. According to other texts, which *Raghunandana* quotes, the *Brāhmaṇas* who prescribed penance should receive from him who performed it, a milch cow, a bull or at least some trifle. Whether the king's judge received any fixed salary over and above the court fees, has not been expressly mentioned, yet, however, analogy with the executive officers, who also exercised judicial functions suggested it.[3]

The court fees were higher in the case of an appeal. He who thought that the verdict given against him was unjust, might demand a renewal of the law-suit, but must bind himself to pay twice the fine decreed by the first verdict in the case of a defeat, if he was victorious in the second suit this double fine was inflicted on his opponent and at the same time on the unjust judges.[4]

As already discussed, fines, acknowledged as a source of state revenue, generally covered thefts, frauds, abetment, assault, impersonation, conspiracy and contempt against the king, cheating, abduction and acts of omission and commission in the execution of justice. Fines usually ranged from 6 to 1000 *paṇas* and *Kauṭilya* strictly laid down his maxim that fines were to be in proportion to the gravity of the offence or crime. Generally the fines were covered by the three amercements—the lowest or first amercement was from 48 to 96 *paṇas*, the middle-most from 200 to 500 *paṇas* and the highest from 500 to 1000 *paṇas*. The highest amount was charged for stealing images of gods or of animals, abducting men, or taking possession of fields, houses, gold and gold-coins. The punishment was either decapitation or the payment of this amount. For

1. *Yājñavalkya*, II, 11; cf. *Manu*, VIII, 59; *Nārada*, VI, 86.
2. *Nārada*, I, 133; cf. *Manu*, VIII, 139.
3. *Manu*, VII, 118 ff.
4. *Yājñavalkya*, II, 4, 305; cf. *Nārada*, I, 1, 65 f; *Bṛhaspati*, VI, 5 ff.

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various kinds of theft and cheating the fines ranged from 100 to 600 *paṇas* depending on the nature of the theft or deceipt of dice-play or abetment of a thief or adulteror or abduction.

Omnipotence of Law

Nārada says that there were three persons who were independent in this world. They were:[1]

(a) the king,

(b) a spiritual teacher, and

(c) in all castes successively a householder in his own household.

In their own sphere they were invested with extensive powers but if they were guilty of abuse they incurred sin and were liable to punishment. All subjects were dependent—the ruler of the country was independent, a student was dependent but the teacher was independent. Wives, sons, slaves and other attendants were dependents; the head of the family to whom the property had descended by right of inheritance, was independent with regard to it.

Hindu law exempts nobody from punishment. Neither a father nor a teacher, nor a friend, nor a mother, nor a wife, nor a son, nor a domestic priest was to be left unpunished by a king if he did not keep within his duty.[2]

The king was not supposed to remain indifferent by entrusting the administration of justice to the hands of others. One quarter of the sin of an unjust decision fell on him.[3] He lost his reputation while alive and fame and heaven after death by unjust punishment.[4]

1. *Nārada*, I, 32, 33, 34.
2. *Manu*, VIII, 335

   पिताचार्यः सुहन्माता भार्या पुत्रः पुरोहितः ।
   नादण्डयो नाम राज्ञो स्ति यः स्वधर्मेन तिष्ठति ।।
3. *Manu*, VIII, 18

   पादोऽधर्मस्य कर्तारँ पादः साक्षिणमृच्छति ।
   पादः सभासदः सर्वान्पादो राजानमृच्छति ।।
4. Ibid., VIII, 127, 128

   अधर्मदण्डनं लोके यशोघ्नं कीर्तिनाशनम् ।
   अस्वर्ग्यं च परत्राणि तस्मात्तत्परिवर्जयेत् ।।
   अदण्डयान्दण्डयन राजा दण्डयांश्चैवाप्यदण्डयेन् ।
   अयशो महदाप्नोति नरकं चैव गच्छति ।।

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As already discussed in the administration of justice, the punishment of the criminal appears to be one of the chief duties of a good king. If the punishable person remained unpunished the king should fast one day and he should fast three days if an innocent person was punished.[1]

It therefore became necessary that he should punish his judges and ministers if they decided anything contrary to justice. He was supposed to impose a fine of one thousand *paṇas* if either his ministers or his judges settled anything improperly.[2] For considering the punishment to his wicked judges he decided after consulting learned *Brāhmaṇas*.[3]

A judge was to be declared quite unworthy of his position as a member of the court and subsequently was to be fined by the king if he passed an unjust decision actuated by wrath, ignorance or covetousness.[4] Nobody could act as a judge without taking upon himself the risk of being punished in the event of any miscarriage of justice.[5] Assessors (*Sabhyās, Sabhāsada*) of the court were liable to be fined for any verdict that was contrary to justice. They would speak out their opinion even unbidden and should not agree out of selfish motives, with a king who was giving wrong judgment, for in that case they themselves became his accomplices in the crime and would go to hell alongwith him.[6]

Stressing the difference between the responsibility of the *Sabhyās* and the responsibility of the judge or the king, *Viśvarūpa* says, the king or his representative should suffer

1. *Vaśiṣtha*, XIX, 40-43

   दण्डयोत्सर्गे राजैकरात्रमुपवसेत् ।
   त्रिरात्रं पुरोहित: ।
   कृच्छ्रमदण्डयदण्डने पुरोहित: ।
   त्रिरात्रं राजा ।

2. *Manu*, IX, 234

   अमात्या: प्राड विवाको वा यत्कुर्यु: कार्यमन्यथा ।
   तत्स्वयं नृपति: कुर्यात्तान्सहस्रं च दण्डयेत् ॥

3. *Bṛhaspati*, VI, 6.
4. *Nārada*, I, 67.
5. Ibid., I, 66.
6. Ibid., I, 2, 3.

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twice the punishment of all the *Sabhyās* because the ultimate decision is that of the king or his representative.[1]

The king viewed law with profound respect as the king of kings. He knew that one quarter of the guilt of an unjust decision and one sixth of the virtue or vice of the subjects would devolve on him.[2] He knew it as a settled rule that where another common man for any act would be fined one *Kārṣāpaṇa* he would be fined one thousand. The fine should be thrown either into water or given to *Brāhmaṇa* versed in the *Vedas*.

Judges

A judge was a person who possessed judicial jurisdiction—civil, military or ecclesiastical. In the legal sense, he was a judicial officer appointed by the king to preside in courts of law. He decided legal questions duly brought befor him.

The judges were commonly called the *dharmādhikaraṇa*, the *praḍeṣṭṛ* or the *paṇḍita*.[3] The chief judge was called the *Prāḍavivāka*. The word *prāḍavivāka* is a combination of *prāḍa* and *vivāka*. *Prāḍa* means one who puts questions to the suitors—from the root '*pracch*' and *vivāka* means who speaks out or analyses the truth—from the root '*vāc*' with '*vi*'. The derivation is given by *Nārada*, *Bṛhaspati* and others. As an expert surgeon removes the thorn or morbid matter out of a wound, even so the *Prāḍavivāka* should remove the thorn of injustice out of a law-suit by means of investigations and enquiries. Suffice it here to say that the term connotes a person who examines and cross-examines, investigates the whole matter and pronounces a dicision.

As shown by the commentary on the *Gautama Sūtra*, the term *Prāḍavivāka* apparently began with an etymological significance (*Yaugika*) referring to one who put questions and cleared up matters; later, it became an official designation

1. Vardachar,ar, S., *The Hindu Judicial System*, p. 116.
2. *Manu*, VIII, 8, 304.
3. *Śukra*, II, 99, 100

युक्तिप्रत्यक्षानुमानोपमानैर्लोक शास्त्रत: ।
बहुसम्मतसंसिद्धान्विनिश्चत्य सभास्थित: ॥
ससभ्य: प्राड्विवाकस्तु नृपं सम्बोधयेत्सदा ।
वर्तमानाश्च प्राचीना धर्मा: के लोक संश्रिता: ॥

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(*Roodi*) signifying the presiding judge. Commenting on *Manu*,[1] *Medhātithi* says that the term has by his time ceased to bear its etymological significance (*Yaugika*) and become a word with a fixed connotation (*Roodi*). Another commentator interprets the term *Prāḍavivāka* as 'he who explains questions put by another and explains also the answer given' (or one who answers another's questions after careful consideration).[2]

At one time his position seems to have been that of a subordinate, i.e. when he sat in the *Sabhā* along with the king; but later, when he presided over the *Sabhā* (though under Royal authority), his function was not merely advisory; the responsibility for the decision was his, though be could not pass a sentence of fine or of corporal punishment (but only *Vāgdaṇḍa* and *Dhīgdaṇḍa*). In the words of *Aparārka* 'If the king himself attends the hearing, the *Prādavivāka* is a counsellor: at other times, he is the Hearer (judge)' "राजाचेद्व्यवहारान् पश्यति प्राड्विवाकः अनुमन्ता अन्यदातु व्यवहारदृष्टा ।"

He should also be determined, firm, patient, virtuous, impartial, pious, kind-hearted and of a good family. As insignia of his position he carried the seal (*mudrā*) of the king, which was particularly necessary for the summons of the parties, the court conducted by him was therefore called *mudrita*. He was to be versed also in traditional lore. He investigated law in regard to the cases under consideration.

The *prāḍavivāka* presided over the royal *sabhā* which was the High Court of justice. *Manu* and *Śukra* also say that the chief judge should sit with the members of the judicial assembly (*Sabhyaiḥ saha*) to decide cases. On this office *Nārada* writes:[3]

He is called a (*prāḍavivāka*) chief judge, who fully acquainted with the eighteen titles (of law)[4] and with the

1. *Manu*, VIII, 79.
2. *Dharmakoṣa*, I, p. 11. परकीयं प्रश्नं सभ्यचिच्योत्तरस्यवक्ता ।
3. *Nārada*, I, 1-2.
4. *Manu*, VIII, 4-7
   (1) Recovery of debts,
   (2) Deposit and pledges,
   (3) Sale without ownership,
   (4) Partnership transaction,
   (5) Non-payment of wages,
   (6) Resumption of gifts,

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eight thousand subdivisions thereof, skilled in logic and other branches of science and thoroughly versed in revealed and traditional lore, investigates the law relative to the case in hand by putting question (*prat*) and passing a decision (*vivecayati*) according to what was heard or understood by him.

To this *Bṛhaspati* adds that the judge should examine the accused by questions and counter questions.[1] He must begin speaking in a pleasing manner perhaps to create confidence and then deal with the accused according to the law. *Vyāsa* rules that he must examine the case with the assessors and never by himself.[2] The judge alone was, however, not the whole court. He was only a component, though important, part of the wider concept which constituted a court. The individuality of the presiding officer was essentially different from the impersonal entity of a court. This was the reason why jurisdiction, territorial or with reference to subject matter was conferred by law on the courts and not on judge.

Manu provides that the judge should in a conciliatory

(7) Non-performance of agreement,
(8) Recision of sale and purchase,
(9) Dispute between master and servant tending cattle,
(10) Disputes regarding boundaries or trespass,
(11) Violence consisting of assault,
(12) Slander and libel, in other words defamation,
(13) Theft,
(14) Robbery and violence,
(15) Adultery,
(16) Duties of man and woman,
(17) Partition (inheritance including adoption),
(18) Gambling and betting.

These eighteen titles of litigation done by *Manu* have been further subdivided into 132 parts by *Nārada* (cf. *Nārada*, Jolly's translation, pp. 9-12).

1. cf. *Chaṇḍeśvara, Rājanīti Ratnākara*, Patna, p. 19.
2. *Manu*, VIII, 10

सोऽस्य कार्याणि संपश्येत्सभ्यैरेव त्रिभिर्वृतः ।
तदा नियुञ्ज्याद्विद्वांसं ब्राह्मणं कार्यदर्शने ॥

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manner exhort all witnesses assembled inside the court in the presence of the plaintiff and defendant as follows:[1]

> Whatever acts of these two (litigants) between themselves you know as regards this matter (in dispute) narrate them all truthfully, since you are the witness in this case.

The chief justice and the other judges were chosen in view of their eminent character and deep learning. They were, as a rule, *Brāhmaṇas*. but sometimes a few of them were selected from the other castes. But the *Śūdras* were absolutely excluded from the post of a judge. The king should appoint as judges persons who were well-versed in the *Vedas* and the other branches of learning, We have seen, as a rule, that the chief judge was preferably to be a learned *Brāhmaṇa*. *Manu*,[2] *Yājñavalkya*,[3] *Kātyāyana*,[4] and *Śukra*[5] prescribe that if a learned *Brāhmaṇa* could not be had for the chief judge, then a *Kshatriya* or a *Vaiśya* who knew the *dharmaśāstras* might be appointed. But the king should carefully avoid appointing a *Śūdra* as a judge. As in the case of the chief judge, the *Sabhyās* should preferably be *Brāhmaṇas* but they might be *Kshatriyas* or *Vaiśyas*. *Manu*[6] and *Bṛhaspati* say that when in a *Sabhā* three *Brāhmaṇas* learned in the *Vedas* sat along with the chief judge appointed by the king that was like the *Sabhā* of *Brahmā* or it was like a sacrifice.

1. Ibid., VIII, 80
   यद्यूयोरनयोर्वेत्थ कार्ये स्मिंश्चेष्टितं मिथः ।
   तद्ब्रूत सर्वं सत्येन युष्माकं ह्यत्र साक्षिता ॥
2. *Manu*, VIII, 9
   यदा स्वयं न कुर्यात्तु नृपतिः कार्यदर्शनम् ।
   तदा नियुञ्ज्याद्विद्वांसं ब्राह्मणं कार्यदर्शने ॥
3. *Yājñavalkya*, II, 3.
4. *Kātyāyana*, 67.
5. *Śukra*, IV, 5, 14
   यदा विप्रो न विद्वान् स्यात् क्षत्रियं तत्र योजयेत् ।
   वैश्यं वा धर्मशास्त्रज्ञं शूद्रं यत्नेन वर्जयेत् ॥
6. *Manu*, VIII, 11
   यस्मिन्देशे निषीदन्ति विप्रा वेदविदस्त्रयः ।
   राज्ञश्चाधिकृतो विद्वान्ब्रह्मस्तां सभां विदुः ॥

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Manu[1] says that a king might prefer a *Brāhmaṇa* who was not learned and maintained himself by the mere fact of his caste but should never have a *Śūdra* as the expounder of the *dharma* and that a country whose king had a *Śūdra* as a judge to expound *dharma* came to ruin as a cow sank in mud.

A judge should be learned, sagacious, eloquent, dispassionate, impartial; he should pronounce judgment only after due deliberation and enquiry; he should be a guardian to the weak, a terror to the wicked; his heart should covet nothing, his mind be intent on nothing but equity and truth, and he should keep aloof from the anger of the king.

Yājñavalkya,[2] *Viṣṇu*,[3] *Kātyāyana*,[4] *Nārada*,[5] and *Śukra*[6] require the following qualifications of a judge:

(1) they should be endowed with the study of the vedas,
(2) should know *dharmaśāstra*,
(3) should speak the truth,
(4) should be impartial to friend or foe,
(5) should be steady,
(6) should be devoted to their work,
(7) intelligent,
(8) hereditary,
(9) proficient in *Arthaśāstra*.

Bṛhaspati says that the king was not to appoint as *sabhyās* those who were ignorant of the usages of the country, who were atheists and devoid of the study of *Śāstras*, who were either pulled up, hot tempered, greedy or distressed.

Nārada says that even an unauthorised person who was

1. Ibid., VIII, 20
   जातिमात्रोपजीवी वा कामं स्याद्ब्राह्मणव्रुवः ।
   धर्मप्रवक्ता नृपतेर्न्नतु शुद्रः कथञ्चनः ॥
2. *Yājñavalkya*, II, 2.
3. *Viṣṇu*, III, 74.
4. *Kātyāyana*, 57.
5. *Nārada*, 4-5.
6. *Śukra*, IV, 5.16-17
   व्यवहारविदः प्राज्ञा वृत्तशील गुणान्विताः ।
   रिपौ मित्रे समा ये च धर्मज्ञाः सत्यवादिनः ॥
   निरालसा जितक्रोध काम लोभाः प्रियवदाः ।
   राज्ञा नियोजितव्यास्ते सभ्याः सर्वासु जातिषु ॥

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present in court and who was acquainted with the law, should give his opinion if he found that the judges were going to pass wrong judgment. To expose their errors was a pious duty which must be discharged.[1] *Kātyāyana* makes it a duty of the *Sabhyās* to prevent the king from doing the wrong thing or to bring him round to the path of right and justice.[2] They were generally of the *Brāhmaṇa* community. Nārada states elsewhere, that one who was not appointed by the king should not interfere by his speech in the decision of a case and that if he did so he would be fined.[3] This applied to the people who were present in the court to see the trial or those who accompanied the litigants. It had no application to learned *Brāhmaṇas* who though not appointed by the king could state their view of the law.

Quotations show that certain people could claim to be tried by their peers or at least by a jury. This jury system was resorted to for settling complicated questions of fact. It is a very ancient Indian practice. We learn from *Gautama* that husbandmen, merchants, cowherds, moneylenders and artisans desired that their disputes should be settled by eminent and known reputed honest men of their own clan or class.[4]

The assessors of the chief judge must be like himself respectable, pious, learned, truth-loving, impartial, incorruptible men of any one of the three higher castes.[5] They were subordinate to the chief judge as well as to the king; yet the *Sabhyās* too under certain circumstances had formed independent colleges of judges in which decisions were arrived at by a majority in votes or by unanimity. Thus, according to *Nārada* the thorn of injustice might be removed only when the whole college of judges were unanimous about the decision.[6] Among the assessors the chief of the guild and the scribe are specially mentioned, who approximately corresponded to the merchants (*naigama*) and the clerk (*lekhaka*) of the Smṛtis.

1. *Nārada* (Jolly, III, 2), p. 37.
2. *Kātyāyana*, 74-78.
3. *Nārada*, III, 1.
4. *Gautama*, XI, 21, 22.
5. *Viṣṇu*, III, 74.
6. *Nārada*, I, 3, 17.

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Manu,[1] *Yājñavalkya*,[2] *Nārada*,[3] and *Śukra*[4] state that a king should appoint at least three *Sabhyās* (puisne judges or members of the court of justice) to associate with the chief judge in the disposal of suits (the idea being that three are the least number of *Sabhyās* to be appointed). *Bṛhaspati* says that the *Sabhyās* might be seven, five and three.

The three or five members of the judicial assembly acted as jurors as well as judges but the final decision rested with the chief judge. This shows that besides the members of the assembly, other persons present in the court were permitted, on certain occasions, to offer their opinions. *Nārada* says:[5]

> Whether authorised or unauthorised, one acquainted with the law shall give his opinion. He passes a divine sentence who acts up to the dictates of law.

The *Śukranīti* quotes this passage with approval and adds:[6] "Duly qualified merchants should be made hearers."

It also quotes another passage from *Smṛtis*. Either the court house should not be entered, or the right word should be said. A man did not speak or spoke unjustly incurred sin. The point is now clear and we wonder how the custom, if it existed at all, worked in practice.

Baudhāyana also speaks of an assembly of ten members. He again speaks of five, three and one member according to the circumstances of the case.[7] From these the inference is easy to draw that there was always the judge appointed by the state. He was assisted by a number of assessors, the number of which was by no means a fixed one but varied according to the nature and circumstances of the case.

Nārada requires that all the judges of the court should give

1. *Manu*, VIII, 10, 11.
2. *Yājñavalkya*, II, 3.
3. *Nārada*, II, 4.
4. *Śukra*, IV, 5, 17.
5. *Nārada*, III, 2.
6. *Śukra*, IV, 5.27

   अनियुक्तो नियुक्तो वा धर्मज्ञो वक्तुमर्हति ।
   दैवी वाचं स वदति यः शास्त्रभूपजीवति ॥

7. *Baudhāyana*, III, 17.

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a unanimous decision and that then only the decision left no grievance in the mind of the litigant.[1]

Gautama says that if there was a difference of opinion among the judges, the king was to seek the advice of those who were learned in the three *Vedas* (along with the other *Vidyās*) and decide the matter finally.[2]

The unjust judge should pay a fine of double the amount of the disputed sum;[3] they could, however, be punished still more severely, particularly by the confiscation of property and banishment and forfeiture of all property.[4] *Bṛhaspati* regards a corrupt judge, a perjured witness and the murderer of a *Brāhmaṇa* as equally sinful.

Śukra prescribes the punishment of a thief for a scribe (*lekhaka*) taking down a different deposition from the one actually given or for a *Sabhyā* making use of such a deposition knowingly.[5] He prescribes fine and removal from office if a *Sabhyā* (judge) gave a wrong decision through greed[6] and prescribes a fine of 1000 *paṇas* against a judge giving a corrupt decision.[7]

Whatever their personal conscience, judges of various faiths never shirked the task of administering rules of law which were based upon religious principles or had the authority of religion behind them. The awkward current dichotomy between belief and practice—itself hardly a traditional dichotomy in India is,

1. *Nārada*, III,18.
2. *Gautama*, XI, 25.
3. *Yājnavalkya*, II, 2, 4, 305; cf. *Nārada*, I, 1, 66.
4. *Manu*, IX, 231, 234; *Bṛhaspati*, XXII, 10; cf. *Viṣṇu*, V, 180.
5. *Śukra*, IV, 5, 60-61

   प्रसिद्धलिपिभाषाभिस्तदुक्तं लेखको लिखेत् ।
   अन्यदुक्तं लिखेदन्यघोऽर्थिप्रत्यर्थिनां वचः ॥
   चौरवत् त्रासयेद् राजा लेखकं द्रागतान्द्रितः ।
   लिखितं तादृशं सभ्या न विब्रूयुः कदाचन ॥

6. Ibid., IV, 5, 90

   अशोधयित्वा पत्तं ये ह्युत्तरं दापयन्ति तान् ।
   रागाल्लोभाद्भयाद्वापि स्मृत्यर्थं वाधिकारिणः ॥

7. Ibid., IV, 5, 281

   अन्यथा ह्यभियोक्तारं निरुध्याद् बहुवत्सरम् ।
   मिथ्याभियोग सदृशर्हंयेदभियोगिनम् ॥

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handled by them expertly. "A return to the *Dharmaśāstra* whose rules have not been practised at least for seven centuries, would command the obedience of the people when the acts of parliament do not" is a statement of a law teacher.[1]

Thus the judge of ancient days had to shoulder heavy responsiblities. These indicate that the tenure of his office depended to a great extent on his good behaviour in deciding cases. If he misbehaved, he was liable to punishment which necessarily led to his resignation. Side by side this responsibility his independence was of course unquestioned. Mr. K.P. Jayaswal remarks:[2]

> The administration of justice under *Hindu* monarchy remained always separate from the executive and generally dependent in form and ever independent in spirit.

Persons Declared Unqualified to Act as Judges

(1) A Śūdra[3]
(2) Those who were ignorant of the customs of the country
(3) Atheist
(4) Despisers of the sacred books
(5) Madmen
(6) Men of angry disposition
(7) Avaricious persons
(8) Persons afflicted with pain or illness.[4]

Hitavādin

Associations were formed out of the inhabitants of a town, the companies of artisans and the several classes of men. In a time of alarm and at the season of rites performed in common and also on other occasions worthy men were appointed as leaders of the confederacy.

Two, three or five persons were appointed advisers of the association. These advisers were called *Hitavādin*. Directions

1. Capoor, V.N., "Rights of the unmarried daughter in father's property under the Hindu Law". Journal A.I.R., 1966, pp. 63-65.
2. *Hindu Polity*, Madras, 1944, p. 152.
3. *Manu*, VIII, 20-21.
4. *Bṛhaspati*, I, 33.

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received from them were observed by all though they were subject to the approval of the chiefs. In cases of disputes between the chiefs and communities, the king had to decide and reduce them to their duty. Very often than not these associations decided judicial matters.

Recognised Agents and Pleaders

Pleaders were called *Pratinidhi.* They were appointed to conduct a litigation. The qualities in a pleader (lawyer) that marked him out to occupy judicial office were independence of character, great learning in the various branches of law and impartiality. The following *Dharmaśāstrakāras* have defined this class in the following different ways:

Nārada

Engaged by the plaintiff or employed by the defendant, he pleads for the success or discomfiture of parties. He can be employed in case of inability to plead one's own case.

He further says:[1]

If a person deputed by the claimant or chosen as his representative by the defendant, speaks for his client in court, the victory or defeat concerns the client and not the person acting as representative.

Bṛhaspati

The priest and the agent engaged in suit, both are of equal status. The master is the recipient of the merit in sacrifice and of success or defeat in a suit.

Kātyāyana

No substitute should be made but the person should himself plead his cause in cases of homicide, theft, adultery, eating of forbidden food, enticement or abduction of, or rape on maiden girls, assault, forgery and causing injuries.

Vyāsa

In the case of purdānashin woman, minors, lunatics, idiots,

1. Jolly, J., *Nārada*, p. 29.

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the distressed or the disabled, relations as well as paid agents may argue for them in attack or defence.

Parties could employ *Vakils* for pleading their cases. In cases of murder, robbery, adultery, eating prohibited food, false abuse, outraging the modesty of virgin, perjury, destroying the property of a judge, the accused was required to plead and answer in person. A woman, a timorous, a minor, a lunatic, an over-aged person, a sick and an idiot might, however, employ a *Vakil*.[1]

Acts, prescribed the *Vedas*, were to be performed by the person himself; acts prescribed by the *Smṛtis* could be performed by an agent. If a man became incapable of finishing an optional *Śrauta* act after commencement, it could be finished by another. Obligatory acts could be commenced through an agent. For the performance of optional acts the man himself was necessary but if he became incapacitated it could be completed by an agent.

Hindu lawyers laid down a table of various heads or forms of litigation for general compehension and at the same time made provisions for new cases which might possibly arise. In the table, however, they mixed civil suits and criminal actions together. The apparent reason for this amalgamation was the fact that both types of cases were tried by the same court since no separate courts existed for trying civil and criminal cases.

The Position of Brāhmaṇas

Much favour was shown to the twice born (*dvija*) classes, especially the *Brāhmaṇas*, and great severity, to the *Śūdras*. This was owing to political ground and the social position of the different classes. In a society where caste system was rigorously maintained, the higher classes were required to be protected from the ignorant low class *Śūdras* and hence no indulgence was shown to the latter.

Great regard was shown to pious and learned *Brāhmaṇas* and as a special mark of this regard, the *Hindu* king would

1. *Bṛhaspati*, II, 34.

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not pass any capital sentence on a *Brāhmaṇa*.[1] A *Brāhmaṇa*, to expiate his sins and the crimes, might, of his own accord, put an end to himself by *Tushṇala*. This distinction was maintained purely on religious and social grounds and not so much on any political ground. Sometimes the *Brāhmaṇas* were punished more severely than the *Śūdras*.[2]

Since the whole system of judicature numerously refers to *Brāhmaṇas*, it is considered necessary to give a thorough definition of the term which has almost lost its tint and interpretation in the modern society. Rather than derivatives or conjectures, it is worthwhile to assess the definition and the merit of the word *Brāhmaṇa* according to the law givers themselves namely *Manu* and *Vaśiṣṭha*. "Who is a *Brāhmaṇa*?" "Who is a *Ṛṣi*?" These questions are not to be answered by what we observe in these degenerate days, when the *Brāhmaṇa* has fallen from his original sacred position.

A *Brāhmaṇa* was one who was well-versed in the *Vedas* and who knew the Supreme Being. To him were assigned the duties of teaching and studying the *Vedas*, sacrificing for his own benefit and for others, giving and accepting the alms.[3] He had to perform daily five great sacrifices by teaching and studying, which produced spiritual efficacy; by offering water and food called *Tarpaṇa* for the satisfaction of the manes; by performing *homa* ceremonies to appease the gods; by distri-

1. *Manu*, VIII, 379-380

   मौण्डयं प्राणन्तिको दण्डो ब्राह्मणस्य विधीयते ।
   इतरेषां तु वर्णनां दण्ड: प्राणन्तिको भवेत् ॥
   न जातु ब्राह्मणं हन्यात्सर्वपापेष्वपि स्थितम् ।
   राष्ट्रादेनं वहि: कुर्यात्समग्रधनभक्षतम् ॥

2. Ibid., VIII, 337-338

   अष्टापाद्यं तु शूद्रस्य स्तेये भवति किल्बिषम् ।
   षोडशैव तु वैश्यस्य द्वात्रिंशत्क्षत्रियस्य च ॥
   ब्राह्मणस्य चतु:षष्टि: पूर्ण वापि शतं भवेत् ।
   द्विगुणा वा चतष्षष्टिस्तद्दोषगुणविद्धि स: ॥

3. *Manu*, I, 88

   अध्यापनमध्ययनं यजनं याजनं तथा ।
   दानं प्रति ग्रहं चैन ब्राह्मणानामकल्पयत् ॥

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buting food to animals; and by hospitality serving humanity at large.[1]

Thus spiritual culture, ancestor-worship, devotion to gods, and service to man and even to animals, was his daily concern. Culture was his aim, meditation was his food, and spiritual perfection was the consummation that he devoutly wished for. All earthly aggrandisements were absolutely beneath his consideration. Studying the *Vedas*, practising austerities, the acquisition of true knowledge, the subjugation of the senses, abstention from doing injury and serving the spiritual guide are the best means for attaining supreme bliss.[2] Austerity and sacred learning were the best means by which a *Brāhmaṇa* secured supreme bliss; by austerities he destroys all sins, and by sacred learning he attains salvation (cessation of births and deaths).[3] All his efforts were directed to this end, and he had no other aspiration to lead him away. His life was divided into four stages:

(1) a student,
(2) householder,
(3) devotee, and
(4) a hermit in the forest.

When he attained supreme bliss he was called a *Ṛṣi*. He was distinguished for the concentration of the mind, austerities, the subjugation of the organs, liberality, truthfulness, purity, sacred and worldly learning, compassion, intelligence and the belief in God and in a future life.[4] Those *Brāhmaṇas* can

1. Ibid., III, 70
   अध्यापनं ब्रह्मयज्ञः पितृयज्ञस्तु तर्पणम् ।
   होमो दैवो बलिर्भौतो नृयज्ञोऽतिथिपूजनम् ॥
2. *Manu*, XII, 83
   वेदाभ्यासस्तपोज्ञानमिन्द्रियाणां च संयमः ।
   अहिंसा गुरु सेवा च निःश्रेयसकरं परम् ॥
3 Ibid., XII, 104
   तपो विद्या च विप्रस्य निःश्रेयसकरं परम् ।
   तपसा किल्बिषं हन्ति विद्ययाऽमृतमश्नुते ॥
4. *Vaśiṣtha*, VI, 23
   योगस्तपो दमो दानं सत्यं शौचं श्रुतंघृणा ।
   विद्याविज्ञानमास्तिक्यमेत ब्राह्मण लक्षणम् ॥

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save (from evil) who are free from passion, and patient of austerities, whose ears have been filled with the texts of the *Veda*, who have subdued the organs of sensation and action, who have cessed to injure animated beings and who close their hands when gifts are offered.[1] Some become worthy receptacles of gifts through sacred learning, and some through the practice of austerities. But that *Brāhmaṇa* whose stomach does not contain the food of a *Śūdra*, it even the worthiest receptacle of all.[2] So great was his modesty that no one could know if he were good or bad, ignorant or deeply learned, of good or bad conduct.[3] His writings became the result of inspiration.

The sacredness of the character of a *Brāhmaṇa* was impressed on his works. He was the guide of kings, princes and peasants. All stood up in a reverential posture when he came out from the forest of his study and meditation to guide the *Hindu* world along the path prescribed by him through heavenly inspiration. The service accomplished, he would go poor and almost naked back to the forest from which he had come with absolutely no motive to gain fame or to aggrandise himself in any the least way. If fame came to him, it came unsolicited, the result of his high intellectual attainments, and the sacredness of his noble character. If the law dealt with him and his descendants somewhat leniently, and if the offenders against them were visited with exemplary punishment, it was, irrespective of the question of vindication, what might be called perfectly natural.

The position of a poor *Brāhmaṇa* in India was more enviable than that of the highest potentate in the world. The greatest *Kshatriya* monarch would revere him and fall prostrate at his feet. Any insult or outrage done to him could not be tolerated. The leniency or partiality shown was the result of the sanctity

1. *Vaśiṣtha*, VI, 25
   ये शान्तदान्ताः श्रुतिपूर्णकर्णाः जितेन्द्रियाः प्राणिवधान्तिवृत्ताः ।
   प्रतिग्रहे सङ्कुचिताग्रहस्तास्ते ब्राह्मणास्तारयितुं समर्थाः ॥
2. Ibid., VI, 26
   किंचिद्वेदमयं पात्रं किंचित्पात्रं तपोमयम् ।
   पात्राणामपि तत्पात्रं शूद्रान्त यस्य नोदरे ॥
3. Ibid., VI, 44
   यं नं सन्तं न वासन्तं न बहुश्रुतम् ।
   न सुवृतं न दुर्वृत्तं वेद काश्चित्स ब्राह्मणः स ब्राह्मण इति ॥

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of his character. On the same principle is explainable the fact that a *Brāhmaṇa* was not visited with capital punishment. In some cases, however, where he branded himself as a *Brāhmaṇa*, the law visited him with more severe punishment than persons belonging to the other castes.[1]

To condemn the *Brāhmaṇas* of the *Hindu* age by observing the degenerate condition of their descendants, and the evils of priest-craft in other countries and in modern India, is not justified.

From the *Hindu* religious point of view, therefore, the position of the compartment of *Brāhmaṇas* is very important because on them the prosperity and the continued existence of the Hindu society depends. It is for this reason that in the next verse the *Brāhmaṇas* (*Vipra*) are enjoined to observe the rules of conduct prescribed by the *Vedas* and *Smṛtis* very carefully.

Herein are enumerated the qualifications of the judges or of the persons to whom the knowledge of the *Smṛtis* is to be entrusted. This shows how the *Brāhmaṇas* were most suited for the post, as the *Vaiśyas* were given to the habit of accumulating and acquiring wealth. Only those *Kshatriyas* and *Vaiśyas* who were ready to renounce this right were to be allowed to be judges. The *Śūdras* and the *Avarṇas* were mainly governed by their customs and were not at all able to understand the *Vedas* and *Smṛtis*. They, therefore, were unfit to be judges. It is for this reason that the king was advised never to appoint a *Śūdra* as a judge.[2]

We find references in *Yājñavalkya* about the fact that there were endowed building presided over by the *Brāhmaṇas* who were learned in three *Vedas*.[3] *Bṛhaspati* also says

1. *Manu*, VIII, 337-338.
"In a case of theft the guilt of a *Śūdra* shall be eightfold, that of a *Vaiśya* sixteenfold, that of a *Kshatriya* two and thirty fold, and that of a *Brāhmaṇa* sixtyfour fold or quite a hundred fold, or even twice four and sixty fold."
cf. *Gautama*, XII, 17.
"If a learned man offends, the punishment shall be very much increased."
2. *Manu*, VIII, 20.
3. Colebrooke Digest, IV, 402.

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that they had to perform for the townsmen, the constant, occasional and voluntary rites and those which were deprecative or expiatory and they were required also to decide doubtful cases which evidently meant cases relating to judicial consideration [1]

As already stated the *Brāhmaṇas* were given the work of teaching the *Vedas*. This was the work which only they were allowed to do. This was the vocation by which they were to earn their livelihood. The reason, why they alone were allowed to know in former times was that all the knowledge was to be transmitted through recitation. Every word had to be correctly pronounced and understood if the purity and correctness of the *Vedas* was to be maintained. This was a very difficult task and only *Brāhmaṇas* were the persons who could properly undertake it.

I. It also required about thirty-six years for a person to master all the *Vedas* to enable him to teach it to others. The initiation ceremony took place at the age of eight. A person, therefore, was about forty-four (36+8) years of age when he became proficient in *Vedas* to teach it to others. The *Brāhmaṇas* only could afford so much time in learning *Vedas*. The vocations of the *Kshatriyas* and the *Vaiśyas* were of such character that they could not spend so much time in learning Vedas. Moreover the *Vedas* were not of any great use to them in their usual vocations in later life.

II. A very high standard of morality was necessary for the *Brāhmaṇa* group. This the average *Kshatriyas* and the *Vaiśyas* found to be irksome.

III. The culture of the *Brāhmaṇa* group again was quite different from that of the *Kshatriyas* and the *Vaiśyas*.

IV. A high moral conduct and cultural speciality were necessary for maintaining the ideal of the society at a very high level. This was necessary if the society was to be *Sanātana* or eternal.

V. If all the social work was to be divided according to the perfect division of labour in which every person was to be given a vocation which suited his inherent characteristics and abili-

1. *Bṛhaspati*, XIX, 8-9.

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ties, the *Brāhmaṇas* were the only fit persons to undertake this onerous task of teaching the Vedas.

VI. If the moral standard had to be continuously maintained at a very high level, it was necessary that the *Brāhmaṇa* group should not be allowed to get very rich, as a combination of wealth, political and temporal power degraded the possessor and made him vicious. The vocation of teaching the *Vedas* was of such a nature that it gave the *Brāhmaṇas* a meagre maintenance and kept them always poor.

VII. The effect of the necessity of maintaining the high standard of education and morality with very low remuneration was that the *Kshatriyas* and the *Vaiśyas* were gradually even unwilling to learn the *Vedas* and left the whole duty to the *Brāhmaṇa* group. In this way in later time we find that the *Brāhmaṇa* group alone was learning and teaching the *Vedas*. The reason for this was that the *Kshatriyas* and *Vaiśyas* left the study of the Vedas as it was of unremunerative character. They were also difficult to learn. This will prove that the allegation that the *Brāhmaṇas* kept all the knowledge to themselves and kept the rest of the population in ignorance is false. The *Śūdras* were unable to learn the *Vedas* while the *Kshatriyas* and the *Vaiśyas* left the learning of the *Vedas* of their own accord and not because they were prevented from doing so. On the contrary the *Hindu* society is under great obligation to the *Brāhmaṇa* group for carrying on this vocation and is unanimous in highly praising the *Brāhmaṇa* group for maintaining the purity and correct pronunciation of the Vedas for thousands of years by recitations as printing was unknown in ancient times.

"The *Brāhmaṇa* must know the means of subsistence (prescribed) by law for all, instruct the others, and himself live according to the (law)."[1]

"On account of his pre-eminence, on account of the superiority of his origin, on account of his observance of particular restrictive rules, and on account of his particular sanctification the *Brāhmaṇa* is the lord of (all) castes (Varṇa)."[2]

1. *Manu*, X, 2.
2. Ibid., X, 3.

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"Teaching, studying, sacrificing for himself, sacrificing for others, making gifts and receiving them are the six acts (prescribed) for *Brāhmaṇa*."[1]

"But among the six acts (ordained) for him three are his means of subsistence, (viz.) sacrificing for others, teaching, and accepting gifts from pure men."[2]

"A *Brāhmaṇa* who knows the law need not bring any (offence) to the notice of the king; by his power alone he can punish those men who injure him. His own power is greater than the power of the king; the *Brāhmaṇa*, therefore, may punish his foes by his own power alone. Speech is his weapon with which he may slay his enemies."[3]

"The *Brāhmaṇa* is declared (to be) the root of the sacred law and the *Kshatriya* its top; hence he who has confessed his sin before an assembly of such men, becomes pure."[4]

The *Brāhmaṇa* has the power of defining the law while its actual execution is in the hands of a *Kshatriya*. In this way the political power also is divided between the *Brāhmaṇas* and the *Kshatriyas* preventing both of them from becoming despotic.

The *Mahābhārata* (śāntiparva) states:

Brāhmaṇas or the *Brāhmaṇa* spirit and *Kshatriyas* or the *Kshatriya* spirit are the basis of the whole society. The *Brāhmaṇa* helps the *Kshatriya* to grow and the *Kshatriya* likewise helps the *Brāhmaṇas*.

Brāhmaṇa witnesses were to be treated with civility and respect and generally no warning was to be given to them for speaking the truth because it was expected that they would not tell a lie.

1. Ibid., X, 75.
2. Ibid., X, 76.
3. *Manu*, XI, 32, 33

   स्ववीर्याद्ब्राह्मवीर्याच्च स्वीवीर्यं बलवत्तरम् ।
   तस्मात्स्वेनैव वीर्येण निगृह्णीयादरीन्द्विजः ॥
   श्रुतते श्रुतीरथवारिसीः कुर्यादित्यविचारयन् ।
   वाक्शस्त्रं वै ब्राह्मणस्य तेन हन्यादरीन्द्विजः ॥

4. Ibid., XI, 84.

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The clemency shown to the Brāhmaṇas was because in ancient times the men of learning and those belonging to priestly class used to be considered an asset to every society and their life sacred. They were considered to be protectors of religion which then played an important role in every community. We know, for instance, even among the Englishmen and Mohammedans clergies and *Maulavis* enjoyed special status in matters of criminal liability.

Persons who cannot sue or be sued

In case of strife between teacher and pupil, father and son, husband and wife or master and servant—mutual litigation was not legal.[1] Since they might be corrected by their seniors. It is therefore clear that in petty matters actions by either party was not warranted. Although there was no absolute prohibition of litigation between such parties.

> It is not intended to forbid important suits on the part of pupils and the like, for in some instances, their suits are admitted, but the litigation of teachers and the rest is not laudable either in a moral or civil view, therefore pupils and others should, in the first instance, be discouraged by the king, or the court. This is the implied sense of verse X, but in very important cases the suits of pupil and the rest may be entertained in the form mentioned.[2]

The text of *Gautama* dealing with the power of a teacher over his student in the matter of correction and how the teacher was to be punished by the king if he exceeded his power did not prohibit a pupil, a son, a wife, a servant from suing. The meaning is that a suit preferred before the king was irregular and preferred by the teacher against his pupil was forbidden. But if the pupil or son violated his duty and the teacher or father (being weak) was not able to correct him, it was consistent with commonsense that he should then apply to the king.

1. *Smṛti*—Quoted by Colebrooke, Vol. II, X, p. 324.
2. Kanjilal, J., HLP, Calcutta, 1913, p. 17.

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CHAPTER TWO

Judicial Proceeding

First Stage

When both the parties or at least their representatives were present at the spot the procedure proper began. The whole judicial proceeding was divided into the following four main heads:[1]

(1) The plaint (*Bhāṣā pāda* or *Pratijñā*),
(2) The reply (or the written statement) (*Uttara pāda*),
(3) The proof (or evidence on behalf of the plaintiff and the defendant) (*Kṛiyā pāda or Sādhana*),
(4) The decision (or judgment) (*Nirṇaya*).

The *Dharmasūtras*, however, do not contain much information on the first, second and fourth parts mentioned above. They contain much information on proof. Besides this, they deal with certain matters, connected with *Vyavahāra*, in a general way.[2]

The above four have been termed by *Kātyāyana* as follows:[3]

(1) *Pūrvapakṣa*,
(2) *Uttara*,
(3) *Pratyākālita*, and
(4) *Kriyā*.

The meaning of *Pratyākālita* is discussion or consideration among the *Sabhyās* about the burden of proof.

If several persons come simultaneously with complaints or plaints, then the order of taking up the cases is regulated by

1. *Yājñavalkya*, II, 8, cf. *Bṛhaspati*, III, 1, 2.
2. The entire matter on *Vyavahāra* as dealt within *Dharmasūtras* may be divided into—(a) judicial procedure and (b) inheritance and succession.
3. *Kātyāyana*, 31.

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the *Varṇa* of the plaintiff i.e. the suit of a *Brāhmaṇa* is first taken up.[1] When plaintiff and defendant come together each claiming to be first their declarations should be received in the order of their castes, or after considering their respective grievance.[2]

A judicial proceeding had eight or ten members having several distinct functions, namely:

(1) The King,
(2) The Chief Judge,
(3) Other Judges (assessors),
(4) *Smṛti* (the law),
(5) The Accountant,
(6) The Scribe,
(7) Gold or Silver,
(8) Fire,
(9) Water, and
(10) The King's own officer.

The court attendant was supposed to enforce the attendance of parties and witness and detain the parties if they failed to give proper securities. The accountant was employed for the purpose of calculation. Water was for satisfying thirst or hunger and gold or silver for the purpose of ordeals. Assessors determind the facts of the case. The law-book *Smṛti* dictated judgment (victory of the one party and penalty of the other). The chief judge published the sentence which was passed.

The judge had the deposition of the complainant at first noted down on a writing board probably of black wood, then the fair copy was made on a sheet, or the plaint was written down on the floor and the whole procedure recorded in this way. The plaint might also be afterwards modified and improved so long as the answer was not tendered.

The judge asks the complainant modestly entering the court:

1. *Manu*, VIII, 24.
   अर्थानर्थावुभौ बुद्ध्वा धर्माधर्मौ च केवलौ ।
   वर्णक्रमेण सर्वाणि पश्येत्कार्याणि कार्यिणाम् ॥
2. *Brhaspati*, III (the plaint), 4.

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What is your complaint, what wrong have you suffered? From whom, how, when and why? Have no fear, speak out.

The plaint which now follows is subjected to a preliminary examination by the judge. If for instance the complainant is half-witted, drunken, a woman or a minor or in general incapable of doing legal business, the plaint may be summarily dismissed. Also a law-suit between father and son, man and wife, master and servant, teacher and pupil is not allowed. If the plaint is accepted the judge shall summon the accused by a sealed warrant (mudrā) or by a court messenger (*Puruṣa*).[1]

Nārada says that proceedings at law are of two kinds:[2]

(1) *Anuttara* (not attended by a wager)
In this case neither the plaintiff nor defendant stakes in writing a certain sum to be paid to the king over and above the amount in dispute in the event of his losing the wager.

(2) *Sottara* (attended by a wager)
A law-suit attended by a wager is where (either of the two parties) stakes in writing a certain sum which has to be paid besides the sum in dispute (in case of defeat). In a law-suit attended by a wager, the defeated party is compelled to pay his stake as well as a fine.

It is explained by the commentator that the stake is a sign of confidence on the part of the wagerer in his own case. Some commentators on *Nārada's* verse would make the wager payable to the successful party while others make it payable to the king. But none suggests that it would go to the judge. All the commentators on *Yājñavalkya's* verse make the wager amount payable to the king. The commentary of *Aparārka* makes it clear that the amount was not intended to be taken by the judge. Referring to the word *dāpayat* (shall cause to be paid) in the verse, *Aparārka* says: 'The *Prāḍavivāka* shall cause the wager amount to be paid to the king and the proved amount to be paid to the creditor—decree holder.

1. *Nārada*, I, 6 ff; cf. *Yājñavalkya*, II, 32 and *Kātyāyana*, II, 1-2.
2. *Nārada*, I, 4, 5.

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Where there is no *Prāḍavivāka* (i.e. where the king himself attends) the king shall himself receive the money.[1]

The Plaint

Plaint was a statement in writing of a cause of action in the nature of an original writ, tendered in open court and setting forth the grievance and asking redress. The same rule guided both. All actions were commenced by filing a plaint before a competent authority. A plaint, though otherwise established, was not correct if it was contrary to established law or usages.

Bṛhaspati suggests that a plaint must be brief in words, unambiguous, free from confusion, devoid of improper arguments and capable of meeting opposite arguments.

In *Sanskrit*, the plaint is called by various names viz. *pakṣa*, *bhāṣa* and *pratijñā*. Sometimes the word '*pūrvapakṣa*' is used for '*pakṣa*'. *Vadin* and *prativādin* generally mean the plaintiff and the defendant though *vadin* sometimes means a litigant (either the plaintiff or defendant). '*Arthin*' (one who seeks the assistance of the court) and *abhiyoktṛ* (attacker) are synonyms of *vadin* and *pratyārthin* and *abhiyukta* (attacked) are synonyms of *prativādin*. *Kātyāyana* suggests that the judge should have the plaint written down on a board (or on the ground) with a piece of chalk as narrated naturally by the claimant and then on a leaf (palm leaf or bark or paper) when it is corrected (after the defendant appears) and that the plaintiff may delete some matters from the original (draft of) plaint and may fill in gaps and that such amendments may be made in the draft till the plaint is finally settled.[2]

Elaborate rules were laid down about the contents of the plaint. *Kātyāyana* requires that in suits about immovable property ten details should be recorded in the plaint viz.:

(1) the country,
(2) the place (town or village in which the property is situated),

1. 'पणं राज्ञे साधितं च धनं धनिने प्राड्विवाकः दापयेत् ।
प्राड्विवाकाभावे राजा स्वयमेव गृह्णीयात् ॥
2. *Kātyāyana*, 130-131.

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(3) situation (boundaries or the figure),
(4) the caste (of both parties),
(5) name,
(6) the dwelling place (of the parties),
(7) the name of the field,
(8) name of the father,
(9) grandfather and great grandfather,
(10) mention of the former kings.

All the details enumerated above need not occur in every plaint but the necessary ones must be stated according to the facts of each case.

Defective Plaint

The plaint which is obscure and self-contradictory and which is absurd, contrary to good custom or which contains any other defects shall be disallowed by the judge. The complainant shall come first to prove his case and his witness shall be heard at first, for this reason dispute about priority may easily arise between the two parties which is then decided not only according to priority of time but also according to the contents of plaints of both the sides or according to the castes of the parties. Both the parties must give sufficient security, otherwise the court-servant takes them into custody and the object of dispute too may be taken care of by a Sādhyapāla.[1]

The following were considered to be the defects of a plaint:[2]

(1) If it relates to a different subject. There must not be a wrong claim. The claim should also not be from a wrong person. It should also not be a claim preferred jointly from person actually liable and wrong person.
(2) If it is meaningless.

1. *Yājñavalkya,* II, 10, *Bṛhaspati* and *Vyāsa* mention *Sādhyapāla* as another court official. He was to carry to conclusion matters at issue by inviting and protecting the witnesses, the plaintiffs and the defendants. He must be honest, truthful and in the confidence of judicial officers.
2. *Nārada,* II (the plaint), 1.

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(3) If the amount of the claim has not been properly stated.
(4) If it is wanting in propriety.
(5) If it is deficient.
(6) If it is redundant.
(7) If it has been damaged.

A plaint in which several different subjects are mixed up together can have no effect. That plaint is declared to be inadmissible in which the order (of the words) is inverted, or the arrangement confused, or scattered what belongs together, or which is meaningless, or related to bygone times, or unapproved. When the original claim is forsaken and replaced by a different proposition the plaint is declared to be meaningless and the previous claim is not carried.

That plaint should be utterly rejected in which two claims are entered, one reasonable and the other unreasonable.

The plaintiff is at liberty to alter his declaration when it is defective or redundant, till the defendant has tendered his answer in the presence of the judges.[1]

It is said by Nārada that when a law-suit has proceeded far enough evidence such as a document or witnesses would then become useless, if that evidence had not been announced before.[2] After a reply is filed by the defendant the plaintiff has to give a list of his evidence i.e. documents or witnesses.[3]

Permitted Amendments

A plaintiff could amend his plaint (statement) before the answer to the plaint had been tendered by the defendant. This amendment he was entitled to change as much as he desired. This legal phenomenon was termed *pratyākālita*. He could also add additional statements in his original plaints.

1. *Bṛhaspati*, III, 15.
2. *Nārada*, I. 62
   निर्णिक्त व्यवहारेषु प्रमाणफलं भवेत् ।
   लिखितं साक्षिणो वापि पूर्वमावेदितं न चेत् ॥
3. *Yājñavalkya*, II, 17
   साक्षिपूभयत; सत्सु साक्षिण: पूर्ववादिन: ।
   पूर्वपक्षेऽधरीभूते भवन्त्युत्तरवादिन: ॥

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New or inconsistent cases were not permitted to be set up as amendment and those who gave up original claims or set up new claims lost their suit. This was because, it was considered, that by doing so they confounded two plaints with one another.

A plaintiff may put under restraint till the approach of the summoner by the king's order the defendant, who does not stand up to meet the claim (i.e. about to abscond or may abscond) that is to be investigated and who disregards the words of the claimant. This is called *āsedha* which is explained by the *Mitākshara* on Yājñavalkya (II, 5) as restraint under the king's order.[1]

(1) restraint as to place (*Sthāna*—e.g. you are not to go elsewhere from your house or a temple).
(2) as to time (e.g. you must present yourself on the 5th of a certain month).
(3) restraint from going on a journey (*Pravāsa*) till the suit is decided.
(4) restraint from doing certain actions (e.g. you are not to sell certain property or to plough a certain field till the disposal of the suit).

Kātyāyana opines that a man who restrains the defendant so as to prevent him from exercising his limbs or from talking or breathing freely be punished and not the defendant if he breaks such restraint.

Kātyāyana specifies several reasons which make a plaint unacceptable. For example:[2]

(1) one that lacks the mention of the time and place (of the cause of action),
(2) that omits the statement of the material (*dravya* which is the subject of dispute) or the amount thereof that is wanting in (stating) the extent of the relief claimed,
(3) that is opposed (to the interests or usage) of the country,
(4) that is prohibited by the king's order, and
(5) that mixes up several *Vyavahārapada.*

1. Kane, P.V., HDS (III), Poona, 1946, p. 291.
2. *Kātyāyana,* quoted by *Aparārka,* p. 609.

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Certain plaints are declared to be vitiated (*Paksabhasa*) and not entertainable viz. a plaint that contains an unknown (or imaginary) grievance, that discloses no injury, that contains letters or words making no coherent sense, that states no cause of action that is incapable of proof or is self-contradictory.[1]

Bṛhaspati says that a plaint that is *Nirarthaka* should not be entertained by the king.

Witnesses mentioned in the Plaint

Witnesses were supposed to be mentioned in the plaints. This is suggested by the text of *Gautama*.[2] In it he writes that a *Brāhmaṇa* must not be forced to give evidence at the word of a non-*Brāhmaṇa* except if he is mentioned in the plaint. He has, however, recorded—"Persons not mentioned in the plaint may also give evidence."[3]

But the plaintiff is not permitted to put under restraint a person engaged in study, nor one about to marry, nor one sick, nor one afflicted by sorrow, nor one insane, nor an infant, nor one intoxicated, nor a very old man, nor one charged with a crime, nor one engaged in the king's service, nor one performing a vow, nor a soldier at the time of battle, nor a husbandman at the time of harvest, nor one in a perilous situation, nor a respectable woman, nor one not his own master.[4]

The Defendant

Defendant was a person or a party making or posing defence. He was called *prattyārthī* or *prativādī*. After the plaint was filed and accepted, attempts were made to produce the defendant in the court for reply in writing to the plaint in the presence of the plaintiff.[5] The answer of the defendant must possess the following characteristics viz.:[6]

1. Ibid., 140.
2. *Gautama*, XIII, 4; cf. *Manu*, VIII, 65
   न साक्षी नृपतिः कार्यो न कारूककुशीलवौ ।
   न श्रोत्रियो न लिंगस्थो न संगेभ्यो विनिर्गतः ॥
3. *Gautama*, XIII, 8.
4. *Bṛhaspati*, II. 36, 37.
5. *Yājñavalkya*, II, 7; cf. *Nārada*, II, 2.
6. *Śukra*, IV, 5, 139
   श्रुतार्थस्योत्तरं लेख्यं पूर्ववेदकसन्निधौ ।
   पक्षस्य व्यापकं सारमसन्दिग्धमनाकुलम् ॥

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(1) it must completely meet all the points of the plaint,
(2) it must not deviate from the truth,
(3) it must not employ vague words,
(4) it must not be self-contradictory,
(5) it should not be such as to require further explanation.

A reply is of four kinds:

(1) *mithyā* (of denial),
(2) *sampratipatt* or *satya* (confession or admission),
(3) *kāraṇa* or *pratyavaskandana* (of special plea or demurrer),
(4) *prāṇnyāya* or *pūrvanyāya* (of former judgment or res judicata).

A reply of denial may take four forms viz.:[1]

(1) This (what is affirmed in the plaint) is false,
(2) I do not know anything about it,
(3) I was not present (when the transaction alleged in the plaint is said to have taken place),
(4) I was then not born.

The first is a direct denial, the others are implied or indirect. Very strict rules of pleading were evolved by the time of *Kātyāyana*[2] who provides that if a statement asserted by the plaintiff in the hearing of the defendant is not traversed the latter or if the latter remains silent when he should have given a reply, it (should be held by the court that it) is admitted (by the defendant). When the defendant declares the truth of the claim made in the plaint that is a reply of admission. Where the defendant accepting as correct the matters (or facts) set out by the plaintiff raises a plea that is a reply of special plea.

In a reply of admission there are only two stages of *Vyavahāra* viz. the plaint and the reply; there is no need of proof (so there is no *Kriyāpāda*) and the plaintiff succeeds as a matter of course (and so there is no necessity of a regular judgment). *Kātyāyana* states at great length the faults of a reply and also what are not proper replies.[3]

1. *Nārada*, II, 5.
2. *Kātyāyana*, 144.
3. Ibid., 173-190.

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Bṛhaspati says that the defendant may point out the defects if they exist in the witnesses cited by plaintiff, but if he finds faults which do not exist in the witnesses, he should be punished with a fine equal to the amount claimed (in monetary disputes) or equal to that which is levied from a false witness.[1] If the witness of a party is not able to refute the defect pointed out by the opponent, the party calling him should try to clear his witness of the faulty, otherwise he should not succeed in his suit.

A defendant would not be liable to be fined, if he disregards a restraint order which lies him down to a river ford, or to a forest, or to a bad place (infested by thieves and tigers) or at the time of an invasion.[2] *Kātyāyana* opines:[3]

> A king should not allow a litigant to proceed if the litigant retains the property or money which he has (been shown to have) seized: it should be delivered over to the opposing litigant (if he be trustworthy) or it may be kept with a third person (as receiver for the successful party).

When the defendant comes on being summoned, he and the plaintiff are both to be placed before judges. Then a surety is to be taken from both who would be capable of carrying out the decree made by the court i.e. who would be able to pay the amount of fine to the king if the defendant denied the plaintiff's claim or who would be able to pay double the amount of the claim if the plaintiff's claim be found to be false.

If any one of the parties cannot offer a surety, then he has to be kept in the custody of the court's bailiff and has to pay the daily wages of the bailiff at the end of every day.[4]

The following persons could not be accepted as sureties:[5]

(1) the master in the case of a party being a servant.

1. *Bṛhaspati* quoted by *Smṛtichandrikā*, II, p. 83
   साक्षिणोयिसमूद्दिष्टान् सत्सु दोषेषु दूषयेत् ।
   अदुस्टान्दूषयन्वादी तत्समं दण्डमर्हति ॥
2. *Nārada*, I, 49.
3. *Kātyāyana*, 120.
4. Ibid., 117.
5. Ibid., 114-116.

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(2) an enemy,
(3) one authorised by the master,
(4) one arrested,
(5) one fined,
(6) one accused of grave sins or offences,
(7) one who is a co-sharer in family property,
(8) a friend,
(9) one who is a perpetual student,
(10) one who is appointed to do the king's business,
(11) ascetics,
(12) one who would not be able to pay the amount decreed and the fine to the king,
(13) one whose father is living,
(14) one who incites the party for whom surety is demanded,
(15) one whose antecedents are unknown.

When a person of any caste is kept guarded for want of a surety he is not to be prevented from doing necessary and obligatory acts, bath, *Sandhyā*, worship and if he runs from the guard he should be fined eight *paṇas*.[1]

Summoning

It was a command to appear at a specific time in a court. They were issued by courts and the plaintiff was called upon simply to identify the defendant whom he had sued. It was the duty of the defendant to attend the court on receipt of the summons, and if he attempted to abscond, the plaintiff might arrest him, to secure his presence in court.

Bṛhaspati says:[2]

Against whomsoever an accusation has been raised, whether founded on fact or on suspicion let the king summon that man either through a letter or memo signed with his seal or through an attendant. The attendant thus acts the part of a peon or a police officer. In serious matters he generally arrests the defendant and produces him before the king; in other cases he leaves with him a summons for his appearance on the day of the trial.

1. Ibid., 119.
2. *Bṛhaspati*, II, 33.

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He further says:[1]

When a man who has a family and relations does not appear before the court through pride after having been summoned (the king or judge) should inflict on him punishment corresponding to the nature of the accusation.

Again he says:[2]

If a witness being summoned does not make his appearance, without being ill, he should be made to pay the debt and a fine, after the lapse of three fortnights.

The power of summoning witnesses seems to have been assumed in the *Dharmaśāstras* as it is included among the duties of the *Sādhyapāla*. The *Arthaśāstra* says:[3]

Parties shall themselves produce witnesses who are not far removed either by time or place; witnesses who are far away or who will not stir out shall be made to present themselves by the order of the judges.

Nārada[4] and Śukra[5] very elaborately prescribe rules about the summoning of the defendant. The first person to be summoned is the one against whom a complaint based on suspicion or truth is made by the plaintiff or complainant. But other persons may be called as defendants either when the person proceeded against by the plaintiff puts forward another as liable to plaintiff's claim or makes another liable along with himself or when another person is accepted by the plaintiff (on behalf of another who is a minor) or another person

1. Ibid., II, 35.
2. Ibid., VII, 31.
3. *Arthaśāstra*, Book III, Chapter II.
4. *Nārada*, I, 52-54.
5. *Śukra*, IV, 5, 102-104

सर्ववर्णोत्तमां कन्यां नाज्ञात प्रभूका: स्त्रिय: ।
निर्वेस्टुकामो रोगार्तो वियक्षुर्व्यसनेस्थित: ।।
अभियुक्तस्तथाज्ञेन राजकार्योघतस्तथा ।
गवां प्रचारे गोपाला: सस्यवापे कृषीवला: ।।
शिल्पिनश्चापि तत्कालमायुधीयाश्च विग्रहे ।
अध्यात्पक्यवहारश्च दूतो दानोन्मुखो व्रती ।।

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himself comes forward (as defendant). The king should not require the personal appearance of the following persons:

(1) the diseased,
(2) minors,
(3) very old (beyond 70),
(4) one in a calamity,
(5) one engaged in some religious rite,
(6) one who would suffer irreparable loss by coming,
(7) one in misfortune (such as the death or disappearance of a dear relative),
(8) one engaged in the king's business or in a (religious) festival,
(9) one intoxicated,
(10) a lunatic,
(11) one distressed,
(12) a servant,
(13) a woman who is young and whose family is in straitened circumstances or who is of good family or who is recently delivered,
(14) a maiden who is of a higher caste than that of the complainant.

Nārada prescribes that cowherds when it is the season for taking cows for grazing, agriculturists in the sowing season, artisans actually engaged in work and soldiers engaged in a war should not be summoned to appear in person, while so engaged.[1] Some one on their behalf should be summoned as a representative in these cases. But it is provided that even these persons may be summoned with proper safeguards in important cases or grave charges, such as the killing of human beings, theft, rape, eating forbidden food, counterfeiting coins, high treason etc. But women who by their earnings support their families, unchaste women, prostitutes, women without family and women excommunicated for grave sins may be summoned to appear personally.

1. *Nārada*, I, 53.

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A person who is summoned and is able to appear but does not appear in person was to be fined according to the value or importance of the subject matter of disputes e.g. in slight causes fifty (copper) *paṇas*, two hundred at least in the cases of middling value and 500 *paṇas* at least in heavy causes.[1] After taking the fine and waiting for 30 days or a month and a half the king may give a judgment in favour of the plaintiff, due to defendant's default. But if the defendant does come after that time, the suit may be restored and proceeded with. But when there is an invasion by an enemy or a famine or epidemic or disease the king should not impose a fine, but send a second summon. In the case of those who are exempted from personal appearance (as above) their relatives (son, father and others) or some other person appointed by them (such as a pupil, servant and others) or one who can be recognised as their agent may be allowed to appear. But no representative was allowed in serious charges cited above. If a father, brother, a friend, or a relative appears before the court for the real litigant, the law-suit may be proceeded with. Whoever carries on anything through another by appointing him to that task should be understood to have done it himself and the business transacted by such a representative or agent cannot be annulled. If a person who is not a brother nor father nor son nor appointed to represent another prosecutes a law-suit for another, he is liable to be fined.[2]

As the king was supposed to be the guardian of a minor's wealth, it appears from this that a king could have appointed a guardian for the suit when a minor was concerned. The above provisions show that maintenance and champerty were not encouraged by ancient *Hindu* lawyers.

Arrest

Arrest is a judicial process of a court wherein an accused is taken into legal custody. Until the legal summons has been issued or even before filing a suit, the plaintiff may place the accused under arrest by preventing him from leaving his house or undertaking a journey or a religious ceremony by means of an appeal to the king for that purpose, the transgression of

1. *Kātyāyana*, 100-101.
2. *Nārada*, II, 22-23.

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such a prohibition entails legal punishments excepting under special circumstances. Such arrest might be one or other of four kinds viz.:

(1) Local arrest,
(2) Temporary arrest,
(3) Inhibition from travelling, and
(4) Arrest relating to his work.

The following personnel were immune to arrest:[1]

(1) a person engaged in study,
(2) a person about to marry,
(3) a sick man,
(4) one afflicted by sorrow,
(5) an insane person,
(6) an infant,
(7) one intoxicated,
(8) a very old man,
(9) one charged with a crime,
(10) one engaged in the king's service,
(11) one performing a vow,
(12) a soldier at the time of battle,
(13) a husbandman at the time of harvest,
(14) one in a perilous situation,
(15) a woman,
(16) one not his own master.

The following classes of persons according to *Nārada* might not be arrested, namely:[2]

(1) one about to marry,
(2) one tormented by illness,
(3) one about to offer a sacrifice,
(4) one afflicted by a calamity,

1. *Brhaspati,* II, 36-37.
2. *Nārada,* Legal procedure, 47.

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(5) one accused by another,
(6) one employed in king's service,
(7) cowherds engaged in tending cattle,
(8) cultivators in the act of cultivation,
(9) artisans while engaged in their own occupation,
(10) a minor,
(11) a messenger,
(12) one about to give alms,
(13) one fulfilling a vow,
(14) one harassed by difficulties.

The Suit

It is a judicial action for the recovery of a right or redress of a wrong; the litigation of a right in a court of justice. A law-suit cannot be instituted mutually between a teacher and his pupil or between father and son or man and wife or master and servant.[1] *Bṛhaspati* also supports this while saying that there is to be no law-suit between teacher and pupil, father and son, husband and wife, and master and servant.[2] This does not mean, according to *P.V. Kane*, that law-suits between them are undesirable, that the king or judges should persuade them to desist from proceeding in court, that if they persist the court has to decide the suits according to the *śāstras*.

Law-suits, according to Nārada, have three efficient causes, for they proved from one or other of three motives, namely carnal desire, wrath and greed.[3] "When mortals", says *Nārada*, "were bent on doing their duty, and were habitually veracious, there existed neither law-suits, nor hatred, nor selfishness."[4] The practice of duty having died out among mankind, law-suits have been introduced. The topics which give rise to law-suits are grouped by the law-givers under eighteen titles.

1. *Nārada*, I (Judicial proceeding), 6.
2. *Bṛhaspati*, quoted by P.V. Kane, op. cit., p. 299
   गुरुशिष्यौपितापूत्रौ दम्पती स्वामिभृत्यकौ ।
   एतेषां समवेतानां व्यवहारो न विद्यते ॥
3. *Nārada*, I, 26.
4. Ibid, I, 1-2.

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It is evident that the list includes both civil and criminal cases. Although it was not found necessary to draw a line of separation between the two classes, the distinction, it appears, was fully understood. This becomes clear from the following passage which occurs in *Bṛhaspati Smṛti*:

> Law-suits are of two kinds, according as they originate in (demands regarding) wealth or in injuries. Law-suits originating in wealth are divided again into fourteen sorts; those originating in injuries into four sorts. Most of these titles had sub-divisions, which, taken together, amounted to one hundred and thirty two.

The Losers of Suits (*avasannas*)

There were many grounds on account of which a litigant became what is called *hīna*—a losing party and sometimes either had his plaint dismissed or his defence struck out and a decree passed against him or he was simply fined. *Nārada* speaks of five kinds of *hīna*:[1]

(1) one who changes his statements (or pleading),
(2) one who does not prosecute his pleading by adducing evidence (i.e. avoids investigation),
(3) one who does not appear when summoned,
(4) who gives no reply, and
(5) who disappears or runs away when summoned.

Nārada explains some of these and other *hīna* parties.[2] *Kātyāyana* prescribes that the above five should respectively be fined 5, 10, 12, 16, and 20 *paṇas*.[3] *Nārada* states that in all civil disputes such as those about women, land or debts, the litigant does not lose his cause even if he commits a mistake in his statements, but he is liable to fine. This conveys that in disputes arising out of wrath (in criminal matters) a person loses his cause if he is guilty of the above acts and he is prohibited from pursuing the matter again.

1. *Nārada*, II, 33.
2. Ibid., I, 56-61; II, 24.
3. *Kātyāyana*, 202.

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The following persons were among those who lost their suit but had right to pray for retrial:[1]

(1) one who takes to flight after having received the summons through fear of acquisition brought against him,

(2) one when asked to make his declaration remains silent.

The following persons also lost their cases but had no further remedy left to them:

(1) one whose case is finalised by the evidence of witness,

(2) one who confesses his guilt or liability.

Bṛhaspati says:[2]

When people to excite fear, or to cause dissension or terror (among the judges or witnesses) or to throw (other) obstacles in way, such litigants lose their suit.

One who absconds after receiving the summons, one who remains silent, one convicted (of a crime) by the (depositions of) witnesses and one who admits the correctness of the charge; such are four losers of their suit.

One who absconds loses the suit after three fortnights, one who remains silent, after a week, and one convicted by the witnesses, or confessing his crime, all at once.

He who announces witnesses and does not produce them afterwards, within thirty days or three fortnights, suffers defeat in consequences.

1. *Nārada*, I, 32; cf. *Yājñavalkya*, II, 16
संदिग्धार्थं स्वतन्त्रो यः साधयेधश्च निष्पतेत् ।
न चाहूतो वदेत्किंचिद्धीनो दण्ड्यश्च स स्मृतः ॥
cf. *Manu*, VII, 55-58
असंभाव्ये साक्षिभि देशे सभाषते मिथः ।
निरूच्यमानं प्रश्नं च नेच्छेद्यापि निष्पतेत् ॥
ब्रूहीत्युक्त न ब्रूयादूक्तं च न विभावयेत् ।
न च पूर्वापरं विद्यात्तस्मादर्थात्स हीयते ॥
साक्षिणः सन्ति मेत्युक्त्वा दिशेत्युक्तो दिशेन्न य ।
धर्मस्थः कारणैरैतैर्हीनं तमपि निर्दिशेत् ॥
अभियोक्ता न चेद्रूब्याद्धब्यो दण्डयश्च धर्मतः ।
न चैत्रिपक्षात्प्रब्रूवाद्धर्म प्रति पराजितः ॥

2. *Bṛhaspati*, V, 4-9.

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When a person has promised to appear at a trial or for the performance of an ordeal and does not make his appearance, it must not be viewed a fraud.

If an obstacle caused by fate or the king should intervene during that time, he does not lose his cause through the mere non-observance of the fixed period.

Failure of the Suit

Manu gives the following list of situations under which a plaintiff loses his suit:[1]

(1) If the plaintiff calls a witness not present at the transaction.
(2) If he retracts his statements.
(3) If he does not perceive them to be confused or contradictory.
(4) If he varies his case after having stated a different case altogether.
(5) If he does not stick to the case already set up by him.
(6) If he converses with the witness in a place where he ought not to have held such conversation.
(7) If he declines to answer a question properly put to him.
(8) If he leaves the court without permission.
(9) If he does not answer questions put to him.
(10) If he does not prove his allegation.
(11) If he does not know what is the first point and what is the second.
(12) If he neglects to produce a witness when required to do so.
(13) If the defendant does not plead within three fortnights, he has lost his cause.[2]

Nārada has given the term *hīna*, meaning caste in the suit,

1. *Manu*, VIII, 53-54
अदेश्यं य दिशति निर्दिश्यापहुते च यः ।
य धिरोत्तरानर्थान्विगीतान्नावबुध्यते ॥
अपदिश्यापदेश्यं च पुनर्यस्त्वपधावति ।
सम्यक्प्रणिहितं चार्थं पृष्टः सन्नभिनन्दति ॥
2. *Manu*, VIII, 58.

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to the following categories of personnel involved in judicial proceedings:[1]

(1) Those who alter their former statements.
(2) Those who avoid a trial.
(3) Those who do not appear in court.
(4) Those who do not make a reply.
(5) Those who abscond after receiving summons.

These above types of personnel (*hīnas*) could have their cause tried anew.

Persons unable to act

Bṛhaspati considers the following personnel to be "unable to act":[2]

(1) The insane
(2) The idiot
(3) Infant
(4) The intoxicated.

For these categories, a kinsman could be appointed to act on their behalf.

(5) Those abandoned by their relatives or friends.
(6) Those charged with a heavy crime.
(7) Persons cast off from society.

Ex-parte Trial

An ex-parte examination on judgment is held in the presence of one party when the other is absent. *Bṛhaspati* lays down that if a person does not make any answer though all sorts of measures have been adopted against him, he is defeated and is liable to punishment after the lapse of a week. In situations like the above the suits are supposed to be decreed ex-parte.[3]

Stay

For suspension of a judicial proceeding during the pendency of suits no fresh suits should be brought for the same relief between the same party. In situations like this, *Hindu* law had provisions for stay.

1. *Nārada*, plaint, 33.
2. *Bṛhaspati*, IV, 7.
3. Ibid., IV, 4.

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Yājñavalkya lays down:[1]

> No counter action can be brought by the defendant, so long as he does not get over the charge brought against him, or so long as the case brought against the plaintiff by a third person is not disposed of. The exceptions are in regard to cases like assault, defamation and robbery.

Res-judicata (*Prāṇanyāya*)

A previous decision between two parties operates as a bar to a fresh suit between the same party except where the decision is set aside in appeal or revision or a fresh trial is ordered. The defence of *Prāṇanyāya* is a good and valid defence under the *Hindu* law.[2]

The party wrongly instituting the second suit not only loses it but is also fined.[3]

Victory in a precious case shall be proved by document regarding that victory. In the case of a plea of former judgment and of a special plea the defendant must make it out; but in the case of a denial, the plaintiff shall prove it.[4]

Right of Private Defence

The right of private defence may be exercised in the following cases:

(1) A twice-born may take up arms when he is hindered in the discharge of his duties, or when the twice-born castes are threatened with destruction in evil times.[5]

(2) A person commits no sin, even if he kills another in the case of right, in his own defence, in a strife for the

1. *Yājñavalkya*, II, 10-11
   कुयत्प्रित्यभियोगं च कलहे साहसेषु च ।
   उभयो: प्रतिभूर्ग्राह्य समर्थ: कार्यनर्णये ॥
   निह्नवे भावितो दधाद्धनं राज्ञे च तत्समम् ।
   मिथ्याभियोगी द्विगुणमभियोगाद्धनं वहेत् ॥
2. *Kātyāyana*, Colebrooke Digest, Vol. I, CCLXXII, p. 377.
3. *Vyāsa*, Ibid., p. 317.
4. *Bṛhaspati*, V, 3, 20.
5. *Manu*, VIII, 348
   शस्त्रं द्विजा तिभिग्राह्यं धर्मो यत्रोपरुध्यते ।
   द्विजातीनां च वर्णानां विप्लवे कालकारिते ॥

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fear of officiating priests, and in protecting women and *Brāhmaṇas*.[1]

(3) An assassin, though he may be a teacher, a child, or an aged man, or a *Brāhmaṇa* well-versed in the *Vedas* may be slain with impunity, if he approaches with murderous intent. The slayer incurs no guilt, whether the assassin is killed publicly or secretly. In such a case fury is well met by fury.[2]

(4) He who kills in his own defence tigers and other animals with sharp nails and claws, goats and other horned animals (excepting cows), bear and other animals with teeth, assassins, elephants, horses or other ferocious animals by whom he has been attacked commits no crime.[3]

Second Stage

The second stage of judicial proceeding comprised of the legal actions following immediately after the entertainment of the case by the court. In this stage the most important aspect was the statement by the defendant.

Written Statement

The defendant was required to submit his answer in writing if he appeared in the court personally. Such written statement of the defendant, when filed, was recorded. It was as a matter of fact, an answer to the plaint.[4] When defendant filed his reply and parties joined issue in court, *Bṛhaspati* and *Kātyāyana* say that they should not then be allowed to compromise the dispute privately without the permission of the court: if they did so they were both to pay double the fine imposed on a

1. Ibid., VIII, 349
   आत्मनश्च परित्राणे दक्षिणानां च संगरे।
   स्त्रीविप्राभ्युपपत्तौ च धन्धर्मेण न दुष्यति ॥
2. Ibid., VIII, 350-351
   गुरुं वा बालवृद्धौ वा ब्राह्मणं वा बहुश्रुतम्।
   आततायिनमायान्तं हन्यादेवाविचारयन् ॥
   नाततायिवधे दोषो हन्तुर्भवति कश्चन।
   प्रकाशं वा प्रकाशं वा मन्युस्तं मन्युमृच्छति ॥
3. *Viṣṇu*, V, 188.
4. *Bṛhaspati*, II, 2; *Nārada*, plaintiff, 2, 6.

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defeated party, as they deprived the king of his dues (court fee).

The answer of the defendant was supposed to be fully meeting the contents of the plaint. It was also required to be corresponding to the tenor of the plaint. As already stated elsewhere, this answer of the defendant can be divided into the following four types:

(1) A denial by the defendant declaring that
  (a) the plaintiff's claim is false,
  (b) pleading ignorance of the claim,
  (c) the defendant not being present at the transaction,
  (d) the defendant not being in existence at the time of alleged transaction.
(2) A confession.
(3) A special plea.
(4) A plea for res-judicata.

In cases, which could suffer because of delay an immediate answer was expected by the court from the defendant. Similarly, in legal action concerning the following also the defendant was to answer immediately:[1]

(1) Action concerning kine.
(2) Action concerning draught oxen.
(3) Women.
(4) Procreation of offspring.

The answer expected from the defendant was of four forms, namely:

(1) A contradiction.
(2) The reverse.
(3) A retort.
(4) A friendly counsel.

These written statements could suffer from the following limitations (defects):[2]

(1) Answers deviating from the subject.
(2) Answers not to the point.
(3) Too much confined.
(4) Very much extensive.
(5) Not in conformity with the tenor of the plaint.

1. *Gautama*, XIII, 29-30.
2. *Brhaspati*, IV, 8.

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(6) Not complete in itself.
(7) Absurd.
(8) Ambiguous.

When the reply had been given the *Sabhyās* (judges) had to consider the question about the burden of proof. *Bṛhaspati* says: 'the *Sabhyās* after considering the nature of the reply should call upon one of the parties that are in court to establish his case'.[1]

Permitted Amendment

Before the answer to the plaint was tendered, the plaintiff was at liberty to amend his plaint in any way he liked but after the delivery of the reply, no amendment was permitted.[2] The plaintiff was entitled to submit a rejoinder to the defendant's reply.

Additional statement not contained in the original written statement was permitted. With permission, amendments could also be made. Thus these could be a supplementary written statement or an amendment of an answer already filed. This is called *Pratyakatta*, i.e. what is interposed.

Amendments to the plaint were permitted only up to the time when the defendant gave his answer. *Kātyāyana* would give even further indulgence in the case of omissions due to oversight or fraud. When the defendant appeared in answer to a summons or otherwise the plaintiff was questioned and his statements were recorded in the presence of the defendant, the latter was allowed to give his answer immediately or after an appropriate adjournment.

Adjournment

Bṛhaspati has given a ruling that delay in the proceeding was to be granted to the defendant if he asked for it under the following conditions:[3]

(a) timidity,
(b) error,
(c) if his memory was deranged.

The adjournment, *Bṛhaspati* lays down, could be for one day or three days or five days or seven days or a fortnight or a

1. *Bṛhaspati*, quoted by P.V. Kane, op. cit., p. 304.
2. *Nārada*, I, 7.
3. *Bṛhaspati*, IV, 5.

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month or three seasons (six months) or a year according to his ability.[1]

Nārada says:

Let the defendant deliver his answer on the next day or three days or seven days later.[2]

Manu says that if the defendant does not plead within three fortnights, he has lost his cause, implying thereby that written statement could be filed within that period.[3] And, *Gautama* says that if the defendant is unable to answer the plaint at once, the court may wait for a year.[4] But (in an action) covering kine, draught oxen, women, or the procreation (of offspring) the defendant (shall answer) immediately, likewise in a case that will suffer by delay. *Nārada* also advises the king to give time to the defendant except in urgent affairs, heinous offences etc.[5]

If the case was a simple one, it was decided then and there. But if it was one which involved any important questions of fact or of law, and was not a matter of any urgency the parties were given time to prepare their respective sides of the case. Where the defendant denied the charge or claim, the plaintiff had to prove his accusation or demand. Under certain circumstances, however, the burden of proof might be shifted from the plaintiff to the defendant. For instance, "When the defendant has evaded the plaint by means of a special plea, it becomes incumbent on him to prove his assertion, and he is placed in the position of a claimant."[6]

If the plaintiff failed to produce witnesses or did not appear within three fortnights, he was non-suited. And if it was proved that the plaintiff had no just cause for bringing the suit, he was ordered to pay a fine. Counter-charges were not, as a rule, permitted. 'One accused', says *Nārada*, 'of an offence

1. Ibid., IV, 6.
2. *Nārada*, plaint, 3.
3. *Manu*, VIII, 58.
4. *Gautama*, XIII, 28.
5. *Nārada*, I, 44-45.
6. *Nārada*, II, 31.

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must not lodge a plaint himself, unless he has refuted the charge raised by the other party. But in certain classes of civil actions, such as disputes between members of a trade guild or between merchants or in quarrels leading to duels, counter-suits were allowed. When two persons brought suits against each other he was admitted as plaintiff whose grievance was the greater or whose affair was the more important of the two, and not the person who was the first to go to law.'[1] A person who had already been accused by another person could not be accused by a different party of the same offence for it is to strike one again who has been struck (by another).[2]

1. Ibid., I, 8.
2. *Nārada*, I, 175.

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CHAPTER THREE

Evidence

Third Stage

The word evidence in legal acceptation includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. Evidence is declared to be twofold, human (*mānuṣī*) and divine (*daivika*). Each of these is again divided into a number of branches by sages declaring the essence of things.[1]

Human evidence is threefold, as it consists of witnesses, writings and inferences. Witnesses are of twelve sorts, writings are declared to be tenfold; inference is twofold, divine test is ninefold. In the case of an answer of the first or third kinds, divine and human proof should be employed, but in the case of an answer of the fourth kind an attested document recording the success of either party should be produced.

After the parties appeared and filed their respective plaints and written statements, they were called upon to produce evidence in support of their case. Witnesses were summoned in the same way as in the case of defendants. Full penalty was provided for disobeying a summon. When there is conflicting evidence, the plurality of witnesses decides the matter. If the number of witnesses is equal on both sides, the testimony of those must be accepted as correct, whose veracity is not liable to suspicion. If the number of such witnesses is equal on both sides (the testimony of those must be accepted), who are possessed of a superior memory. Where, however, an equal number of witnesses possessed of a good memory is found on both

1. *Bṛhaspati*, V, 117.

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sides, the evidence of the witnesses is entirely valueness, on account of the subtle nature of the law of evidence.

But wherever a litigant has been abandoned by his own witnesses through the act of fate, the sages have declared that he cannot be absolved by the performance of an ordeal even.

When, the time of giving testimony having arrived, a witness does not make a consistent statement with reference to the questions under notice, his testimony is as good as ungiven. If the witnesses were to disagree with one another as to place, time, age, matter, quality, shape, and species, such testimony is worthless likewise. If the witnesses wrongly name too low or too high a sum, this too must be known to make no evidence.

The circumstantial evidence (witness etc.) or argumentation is based on a careful consideration and co-ordination of all remarkable and suspicious circumstances. The appearance is the first consideration, such as if a man suspected of murder is found with a bloody sword or a man suspected of theft is found with the stolen property. Yet the judges have to be on their guard in this respect against treachery, as for instance, anybody may artificially produce a wound on his body and denounce his enemy as the perpetrator of the crime.[1]

The consciousness of guilt may also be manifest from the conduct of the parties at court, as in the case of false evidence.[2] Thieves can be convicted not only on the strength of the possession of the stolen property, but they can also be convicted if it is found that they are making extraordinarily large expenses, mixing in bad company and they may be discovered for their thievish propensity or their crime may be laid bare by a sharp cross examination etc.[3] Also the words which the parties let slip when in a passion shall be carefully recorded.[4]

In selecting the method of proving the nature of the case and the competence of the court shall be taken into consideration. Thus in the case of a breach of promise, resumption of a gift, recision of a purchase or a sale, dispute about

1. *Nārada*, I, 176.
2. *Yājñavalkya*, II, 13-15.
3. *Nārada*, Appeal, 12.
4. Ibid., 1, 2, 18.

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property, gambling and wagers, only the proof by means of witnesses is resorted to. On the other hand, in the case of disputes about sitting and using a gate or a road or a canal, possession alone is the decisive factor. The arbitration court of the castes, corporations etc. shall allow only documents as means of proof. In certain commercial cases or where crimes which were committed in secret or long time ago have to be investigated or when the case concerned is about the denial of a deposit or the genuineness of document for the validity of deposition of a witness etc. in all these cases only oaths or ordeals are admissible. In the case of suits about debts documents, witnesses, circumstantial evidence or ordeals are allowed, no ordeals are allowed in law-suits about immovable properties.[1]

The comparative strength of the several kinds of evidence is well put by *Bṛhaspati*:[2]

> Witnesses are superior to inference (circumstantial evidence), a document is superior to witness, undisturbed possession for three generations is superior to all these.

Proof

Means of proof can be divided into two:

(1) human (*mānuṣī*), and
(2) divine (*daivika*).

Documents (*likhita*), witness (*sākshī*) and possession (*bhūkti*) are human while ordeals (*divya*) are divine means of proof.[3] *Nārada*[4] and *Kātyāyana*[5] state that ordeals are to be

1. *Kātyāyana*, 9; cf. *Nārada*, I, 24; *Bṛhaspati*, XIII, 2, 17.
2. *Bṛhaspati. Vyavahāratattva*, 350
   अनुमानादगुरुः साक्षी साक्षिभ्यो लिखितं गुरु ।
   अव्याहता त्रिपुरुषी भुक्तिरेभ्यो गरीयसी ॥
3. *Yājñavalkya*, II, 22
   प्रमाणं लिखितं भुक्तिः साक्षिणश्चेति कीर्त्तितम् ।
   एषामन्यतमाभावे दिव्यान्यतममुच्यते ॥
   cf. *Bṛhaspati, Vyavahārakāṇḍam*, 4, 6
   द्विप्रकाशं क्रिया प्रोक्ता मानुषी दैविकी तथा ।
   एकैकाऽनेकधाभिन्ना ऋषिभिस्तत्त्वदर्शिभिः ॥
4. *Nārada*, II, 29; *Kātyāyana*, 217.
5. Ibid., 218, 219.

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resorted to only when none of the human means are possible or available. If one party relies on human means alone and the other offers the divine means, the king or judge has to accept human means and not divine; in disputes among men, if there be human means of proof though reaching (or covering) only a portion (of the allegations in the plaint) then human means should be accepted and not divine ones even though the latter may cover the whole ground.[1] This latter rule is based on proposition laid down in *Yājñavalkya*[2] and *Viṣṇu*[3] that when a party totally denies a claim and the opponent establishes by evidence a substantial portion of it, the judge may pass a decree against the denying party for the whole of the claim. So the general rule was that the divine mode of proof was to be resorted to only in the absence of any human means of proof.

Kātyāyana allows witnesses or ordeals when the dispute is started with reference to *Sāhasa*, assault or abuse and causes that spring from force and he provides that in the case of a person guilty of *Sāhasa* perpetrated in secret, investigation has to be made by divine proof.[4] *Kātyāyana*[5] and *Aparārka*[6] lay down certain rules about preference among the several means of proof; whatever are declared as the conventional usages of the associations of traders, of guilds (of artisans) and of groups (of Brāhmaṇas), the means of proving them are documents and not ordeals nor witnesses; enjoyment (or possession) alone is weightier in the case of the making and (the use of) doors and ways, as also in the case of water-courses and the like (i.e. in the case of easements) and not writing nor witnesses; in the case of things promised to be given but not given, when a decision is to be given in disputes of servants with masters, in the matter of taking back a thing after it is sold or when a person having purchased a thing does not pay the price in gambling and prize fighting—when in these matters disputes

1. *Kātyāyana*, 218-219.
2. *Yājñavalkya*, II, 20.
3. *Viṣṇu*, VI, 22.
4. *Kātyāyana*, 229-230.
5. Ibid., 225-228.
6. *Aparārka*, p. 629.

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arise the means of proof are witnesses and not documents nor ordeals.

Kātyāyana gives the warning that when a litigant abandoning a strong ground or means of proof resorts to a weak one to prove his case, he would not be again entitled to rely on that (strong ground of proof) after the members of the court have decided as to who should succeed.[1]

Documentary Evidence

Writing has always been considered superior to witnesses. *Bṛhaspati* says:[2]

Human memory is frail, within a six months time even doubts will arise among men in regard to a transaction. Hence God invented the letters occurring in writing.

Nārada comments:[3]

A writing is superior to witnesses, but witnesses are not superior to a writing.

Mārichī states that as regards the sale, mortgage, gift or partition of immovable property a document (should be executed as it) enables the person (in whose favour it is executed) to acquire (clear) title and freedom from doubt (even after the lapse of years).

Nārada very concisely hits the special characteristics of each *pramāṇa*: 'a document is always strong, witnesses are strong (as evidence) only as long as they are alive, possession becomes strong as time passes'.[4]

Vaśiṣtha,[5] *Viṣṇu*[6] and *Yājñavalkya*[7] mention *likhita* as the first means of proof. *Manu* uses the word *Kāraṇa*[8] in the sense

1. Quoted by *Mitākṣarā* on *Yājñavalkya*, II, 80.
2. *Bṛhaspati*, VIII, 2.
3. *Nārada*, I, 145.
4. *Nārada*, IV, 175.
5. *Vaśiṣtha*, XVI, 10
   लिखितं साक्षिणो भुक्तिः प्रमाणं त्रिविधं स्मृतिम् ।
   धनस्वीकरणं पूर्वं धनी धनमवाप्नुयादिति ॥
6. *Viṣṇu*, VI, 23.
7. *Yājñavalkya*, II, 22.
8. *Manu*, VII, 51
   अर्थेऽपव्ययमानं तु करणेन विभावितम् ।
   दापयेद्धनिकस्यार्थं दण्डलेशं च शक्तितः ॥

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of document, in VIII, 168[1] refers to documents obtained by coercion and in IX, 232[2] to fabricated royal edicts.

Yājñavalkya,[3] *Nārada*,[4] *Bṛhaspati*, *Kātyāyana*,[5] *Śukra*[6] and many digests devote great attention to documents. *Nārada* eulogises documents by saying that if the creator had not created writing which is like an excellent eye, the world would have come to grief and that a document is an indubitable means of apprehending the time, the place, the object, the material, the extent and the duration of a transaction.

Bṛhaspati says that since people begin to entertain doubts (about a transaction) even in six months (from an occurrence or transaction) the creator therefore created in the hoary past letters which are recorded on writing material.[7]

Nārada,[8] *Kātyāyana*,[9] *Saṁvarta*[10] and *Bṛhaspati*[11] say that no oral evidence should be allowed to contradict the terms of a document, that the mode of proving (a matter) by a document is always superior, that a writing can be refuted or superseded only by another document relating to the same matter and not by the oaths of witnesses and that if oral evidence were allowed to overrule the force of documents there would be confusion and an end to all written transactions.

1. Ibid., VIII, 168
   बलादृत्तं बलाद भुक्तं बलाधच्चापिलेखितम् ।
   सवन्विलकृतानयनि कृतान्मनुर ब्रवीतं ।।
2. Ibid., IX, 232
   कूटशासनकर्तृंश्च प्रकृतीनां च दूषकान् ।
   स्त्रीबालब्राह्मणधान्श्च हन्याद्दिट्सेविनस्तथा ।।
3. *Yājñavalkya*, II, 84-94.
4. *Nārada*, IV, 69-75, 135-146.
5. *Kātyāyana*, 249-312.
6. *Śukra*, II, 291-318, IV, 5, 172-182.
7. *Bṛhaspati*, by *Vyavahāra Nirṇaya*, p. 81
   षाण्मासिकेपि समये भ्रान्तिः सञ्जायते नृणाम् ।
   धान्नाश्वराणि सृष्टानि पत्रारुढान्यतः पुरा ।।
8. *Nārada*, IV, 145.
9. Both quoted by *Aparārka*, pp. 691-692.
10. Ibid.
11. Quoted in SBE, XXXIII, p. 309, v. 31.

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Kinds of Documents and their Execution

Viṣṇu divides documents into the following three types:[1]

(1) those written before the king (by public officers),
(2) those bearing the superscription of witnesses,
(3) those without witnesses.

The first is a document written in a state office by a scribe appointed by the king and bearing the signature of the head or superintendent. These are also attested by the king when executed in the court of justice. Sometimes the king ordered for it, by an official scribe and signed by his chief judge with his own hand.

The second is a document which is said to be attested by witnesses when having been written anywhere and by anyone and is signed by witnesses in their own hands.

The third document is such which is said to be unattested when it is written by executant with his own hand.

Written documents are of three kinds according to *Bṛhaspati*:[2]

(1) those written by the king or royal writing,
(2) those written in a particular place, and
(3) those written by the executant with his own hand.

Their subdivisions are numerous.[3]

Written documents created by ordinary people are of seven kinds. They are deeds of:[4]

(1) partition
(2) gift
(3) purchase
(4) mortgage
(5) agreement
(6) bondage and
(7) debt.

Edicts created by kings have been divided by *Bṛhaspati* into three categories:[5]

1. *Viṣṇu*, VII, 1-5.
2. *Bṛhaspati* in *Vyavahāraprakāśa*, p. 141
   राजलेख्यं स्थानकृतं स्वहस्तलिखितं तथा ।
   लेख्यं तु त्रिविधं प्रोक्तं भिन्नं तद्बहुधा पुनः ॥
3. Ibid., VIII, 3.
4. *Bṛhaspati*, VIII, 4.
5. Ibid., VIII, 12, 13, 17.

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1. Those executed on copper plates or piece of cloth stating the place, the ancestors of the kings and other particulars. The name of the king and his parents are inscribed. With a precise statement of the year, month and so forth it bears the king's seal. It also contains the value of the grant and the seal of the magistrate. Such documents are called royal edicts.
2. The second is a writing which is the outcome of a royal favour. The king bestows landed and other property in appreciation of the faithful services, valour and other meritorious acts.[1]
3. Royal decrees which establish a claim recording the four parts of judicial proceeding (*chatuṣpada*) and bearing the royal seal.[2]

The fabrication of royal edicts and private documents was so much condemned by the sentiments of society that *Manu* prescribes the extreme penalty of death for such offences as in the case of the murder of women, minors and *Brāhmaṇas*.[3] *Yājñavalkya* prescribes the highest fine for him who adds or writes less than what was intended to be declared in a royal grant or edict.[4] *Śaṁkha* also prescribes death or the excision of a limb for fabrication of documents.[5]

Nārada speaks of two kinds:[6]

(1) written by the executant himself in his own hand, and

(2) written by another.

The first is valid without attesting witnesses, while the second requires to be attested. In the former, no writer (*lekhaka*) nor witnesses are necessary, while in the latter both are necessary.

The *Mitākṣharā* on *Yājñavalkya* and several others divide documents in *rājakīya* (public) and *jānapada* (private or of the

1. Ibid., VIII, 18.
2. Ibid., VIII, 19.
3. *Manu*, IX, 232.
4. *Yājñavalkya*, II, 295
   ऊनं वाऽभ्यधिकं वाऽपि लिखेद्योराजशासनम् ।
   पारदारिक चौरं वा मुञ्चतो दण्ड उत्तमः ॥
5. Quoted by VP, pp. 298, 369.
6. *Nārada*, IV, 135.

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common people).[1] The *Vyavahāra-mayūkha* says that *laukika* and *jānapada* are synonyms and *jānapada* document is of two kinds:[2]

(1) written by the executant himself in his own hand and may be without attestation of witnesses,
(2) which is written by another but must be attested.

Yājñavalkya divides documents into *śāsana* and *ciraka*.[3] *Śāsana* is the same as *rājakīya* (described in *Yājñavalkya* I, 318-20) and *ciraka* is practically the same as *jānapada* writing. The *Mitāksharā* on *Yājñavalkya*, remarks that a royal deed must be written in correct and elegant language but a document executed by ordinary people is not required to be in correct *Sanskrit* but may be written in the local dialect of the parties.[4] *Yājñavalkya* states that a document written by the executant himself in his own hand is authoritative except when it is brought about by force or fraud.[5] He prescribes that a document of debt or the like should be written down by mutual agreement that the creditor's name should be placed first, that it should mention the year, month, half month, *tithi* (day), the names, caste, gotras, the *Vedic* school, the names of the fathers of the parties, that when the writing is finished the debtor should write at the end that the deed is supported by the executant son of so and so, that an even number (i.e. not less than two) should attest the document, stating their fathers' names and that they attest as witness and the scribe should write at the end that he wrote the document at the request of both parties.[6]

1. II, 84.
2. *Vyavahāra-mayūkha*, p. 24.
3. *Yājñavalkya*, II, 22.
4. *Yājñavalkya*, II, 89
   विनापि साक्षिभिर्लेख्य स्वहस्तलिखितं तु यत् ।
   तत्प्रमाणं स्मृतं लेख्यं बलोपधिकृताहते ॥
5. Ibid.
6. Ibid., II, 84-87
   यः कश्चिदर्थो निष्णातः स्वरुच्या तु परस्परम् ।
   लेख्यं तु साक्षिमत्कार्यं तस्मिन्धनिंकर्ण्वकम् ॥
   समासतदधहिनमिजाति स्वगोत्रकैः ।
   स ब्रह्मचारिकात्मीय पितृनामादिचिह्नितम् ॥

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If the debtor or any witness cannot write his signature should be made by another in the presence of all witnesses.[1]

Rājakīya documents are of three kinds according to *Bṛhaspati*:[2]

(1) *śāsana* (a royal grant of land),
(2) *jayapatra* (a judgement deciding a law-suit),
(3) *prasādapatra* (a deed showing the king's pleasure at the devoted service or bravery of a person).

Vaśiṣtha speaks of four types:[3]

(1) *śāsana*,
(2) *jayapatra*,
(3) *ājñānapatra* (a royal command addressed to feudatories),
(4) *prajñāpanāpatra* (a writing of request addressed by the king to sacrificial priests, a purohita, teacher, a learned *Brāhmaṇa* or other highly honoured persons).

It is fivefold according to *Sarasvativilāsa*:[4]

(1) *śāsana*,
(2) *jayapatra*,
(3) *ajñānapatra*,
(4) *prajñānapatra*,
(5) *prasādapatra*.

The *jānapada* writings are divided into various sorts, seven according to *Bṛhaspati*,[5] or eight according to *Vyāsa*[6] and the *Smṛtichandrikā* remarks that there is no emphasis on the number and there may be many more varieties. *Bṛhaspati*,[7] Kātyāyana[8] and others mention and define them as follows:

समाप्तेऽर्थे ऋणी नाम स्वहस्तेन निवेशयेत् ।
मतं मेऽमुकपुत्रस्य यदत्रोपरि लेखितम् ॥
साक्षिणश्च स्वहस्तेन पितृनामक पूर्वकम् ।
अत्राहमभुकः साक्षी लिखेयुरिति ते सभाः ॥

1. *Nārada* quoted by *Mitākṣharā* on *Yājñavalkya*, II, 87.
2. Quoted in VP, p. 141.
3. Quoted in *Sm Ch*, II, p. 55.
4. pp. 111-113.
5. Quoted by *Aparārka*, p. 683.
6. *Smṛtichandrikā*, II, p. 59.
7. Quoted in SBE, XXXIII, p. 305.
8. *Kātyāyana*, 254-257.

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(1) *bhāga* or *vibhāgapatra* (deed of partition),

(2) *dānapatra* (deed of gift),

(3) *krayapatra* (sale deed),

(4) *ādhānapatra* or *adhipatra* (deed of pledge or mortgage),

(5) *sthitipatra* or *saṁvitpatra* (deed of convention),

(6) *dāsapatra* (deed of bondage to serve executed by a person devoid of food or clothing),

(7) *ṛṇalekha* or *udhārapatra* (bond of debt promising return at a future date with interest),

(8) *viśuddhipatra* (deed of purification given to a person with the attestation of witnesses when a penance for a sin has been performed),

(9) *sandhipatra* (deed of peace when a compromise in the presence of leading people, after a charge of the commission of a crime has been made),

(10) *sīmapatra* (deed of bondage, when a dispute about it is settled),

(11) *upagata* (a receipt passed by the creditor to a debtor on payment of the whole or part of a debt),[1]

(12) *anvādhipatra* (a sub-mortgage i.e. where the mortgagee or pledgee mortgages or pledges the property or thing to another and hands over the former deed to his own creditor).

The two branches of private documents (*jānapada*) are either *ciraka* or not *ciraka*; *ciraka* is defined as a document written by hereditary scribes residing in the capital who are approached by the parties and bearing the signatures of the parties and witnesses and the names of their fathers.[2]

Private documents are of eight types according to *Vyāsa*:[3]

(1) ciraka,

(2) upagata (a receipt),

1. *Yājñavalkya*, II, 93
   लेख्यस्यपृष्ठेऽभिलिखेद्दत्त्वा दत्त्वर्णिको धनम् ।
   धनी वोपगतं दद्यात्स्वहस्तपरियिह्नितम् ॥
2. *Śukra*, II, 299-318; cf. IV, 5, 172-177.
3. Quoted by *Smṛtichandrikā*, II, p. 59.

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(3) svahasta (written by the executant himself),

(4) adhipatra,

(5) krayapatra,

(6) sthitipatra,

(7) sandhipatra,

(8) viśuddhipatra.

Some works like the *Vyavahārasāra*[1] and the *Mitāksharā* write the word *cīraka* and not *ciraka*.[2] It was so called (viz. *cīraka*) probably because it was written on the back (of the bark of the birch or some other tree). If the proper word is *ciraka* then it was employed because being executed by scribes appointed by the king, it had validity for all time (*cira*) as compared with purely private documents. *Ciraka* in this last sense seems to be equal to *sthānakṛta* of other writers.[3]

If there is a conflict among documents then a *jānapada* document (written by a scribe and attested) is superior to one written in the hand of the executant himself and a public document is superior to a *jānapada* one.[4]

Validity of Documents

About the legal validity of the documents, the directions given by *Yājñavalkya* are very exhaustive:[5]

(1) Every document which is in the hand writing of the party himself is considered as sufficient evidence without witnesses unless obtained by force or fraud.

(2) Whatever contract shall have been concluded by mutual consent, a written memorial of it should be attested after the lender's name has been first inserted.

(3) It should bear the year, month, half month and day with the designation of the debtor by his name, class and the like.

1. *Vyavahārasāra*, p. 69.
2. HDS, III, p. 311.
3. Ibid.
4. *Vyāsa*, quoted by *Smṛtichandrikā*, II, p. 66, cf. *Sarasvativilāsa*, p. 122.
5. Colebrooke Digest, I, XV, XVI, XIX, XX.

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(4) When the transaction is completed the borrower should sign his name with his own hand adding—"what is above written has the assent of me, son of such a one".

(5) The witnesses should sign their names, all together, in their own hand writing after writing the names of their fathers and so forth adding—"I, son of such a one, am witness to this writing".

(6) The writer is supposed to subscribe at the end of the writing—"This has been written at the request of both parties, by me, such a one son of such a one".

On this aspect of a legal document *Vyāsa* says:[1]

But a borrower who is unlettered, should direct another person to subscribe his declaration of assent or a witness in the same predicament, should cause his name to be signed by another witness in the presence of all the witnesses.

He further says:[2]

If a document belonging to one man is produced by another the latter has to explain his custody of it.

Nārada adds:[3]

If a document be in the hand writing of the party himself, it is valid without subscribing witness. If it be in the hand writing of another person, it is required to be attested.

The validity of all such documents depends on local usages.

That document is said to be valid which is in conformity to the custom of the country, the contents of which answer to the rules regarding pledges and the like and which is consistent in import and language.

If a document has been produced in due time, if the claim under these has been frequently urged and publicly pro-

1. Ibid., XXI.
2. *Vyāsa*, quoted by *Aparārka*, p. 690
   यच्चान्यस्य कृतं लेख्यमन्यहस्ते प्रदृश्यते ।
   अवश्यं तेन वक्तव्यं पत्रस्यागमनं ततः ।।
3. *Nārada*, I, 135-136.

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claimed, it remains valid for ever—even after the death of witness.[1]

Bṛhaspati says:[2]

> Let a man show a document on every possible occasion to families, associations, assemblies and other bodies and read it out to them and remind them of it in order that its validity may be established. Its validity is diminished by neglect if it is neither shown nor read.

Nārada,[3] *Viṣṇu*[4] and *Kātyāyana*[5] require that a document is held valid which is not adverse to the custom of the country, the contents of which follow the rules regarding pledges (and other transactions) and the sequence of the sense and of the words in which is not contradictory or confusing.

The authenticity of a document, if contested, should be ascertained by comparing with it other letters or signs or other documents executed by the same person, by the probabilities of the case and by a mode of writing similar to that contained in the disputed document. In the event of death of the debtor, creditor, witness or scribe, the authenticity of the document has to be ascertained by comparing it with other specimens of their hand writing.

False and Invalid Documents

If a document purporting to be thirty years old is not seen or heard of for the period, its genuineness can very well be doubted and the presumption is that it is not genuine.

> A document that remains in operation for such a long period and there is no occasion for its use for such a long time may be regarded as useless and worthless even though the attesting witnesses be all living.[6]

Nārada also supports the above view. He says:[7]

1. Ibid., 140.
2. *Bṛhaspati*, VIII, 26, 31.
3. *Nārada*, IV, 136.
4. *Viṣṇu*, VII, 11.
5. *Kātyāyana*, 252.
6. *Bṛhaspati*, VIII, 29.
7. *Nārada*, I, 141.

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A document which is unknown and has never been heard of before does not obtain validity when it is produced even though the witnesses be living.

Bṛhaspati lays down the following situations under which a document is not to be held valid:[1]

(1) Executed by a dying person,
(2) Executed by an enemy,
(3) Created by a suffering man,
(4) Created under fear,
(5) Executed by a woman,
(6) Intoxicated person,
(7) One distressed by calamity,
(8) Created at night,
(9) Created by fraud,
(10) Created by force.

Bṛhaspati further says:[2]

Where even a single witness entered in a deed is infamous and condemned by the public or where the scribe is of the same character it is also called a false document.

He adds further[3] that a writing burnt by fire, or executed a long time ago (without being seen or heard of), or soiled with dirt, or intended for a very short period only, or containing mutilated or effaced syllables, is regarded as a false document.

He lays down the following facts:[4]

When a creditor does not claim the debt secured by a bond from the debtor, when the latter has means enough to discharge it and is at hand, the bond loses its validity, as the debt, in such a case, is presumed to have been paid. Likewise when a creditor does not produce the bond and omits to make demands for the satisfaction of the loan after the loan has ceased to yield interest, the bond becomes a suspicious one.

1. *Bṛhaspati*, VIII, 23.
2. Ibid., VIII, 24.
3. Ibid., 25.
4. Ibid., VIII, 28-30.

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According to *Viṣṇu*:[1]

A document caused to be written by force, or which is fraudulent, or attested by a witness bribed or of bad character, or written by a scribe of the same description or executed by a woman, or a child or dependent person, or one intoxicated or insane, or one in danger, or bodily fear is inoperative.

A document is invalid if it has been executed by

(a) a person intoxicated,
(b) one charged with a crime,
(c) a woman,
(d) a child,
(e) one dying,
(f) one diseased,
(g) one lunatic,
(h) those that are dependent.[2]

Genuineness and Authenticity of Documents

Contemporary *Hindu* law-givers have laid down very general and comprehensive rules for the purpose of doing substantial justice to the parties concerned without being over-strict and over-technical.

Bṛhaspati says:[3]

Clever forgers, acquainted with place and time, cleverly manage to forge documents. Writings should therefore be examined with great care. Women, infants, the suffering and illiterate persons are often deceived by their own relations fabricating documents signed with their names. Such forgeries may be detected by means of internal evidence and legitimate title.

Nārada remarks:[4]

If a doubt arises as to whether a document is genuine or forged, its authenticity has to be established by examining

1. *Viṣṇu*, VII, 6-10.
2. cf. SBE, XXXIII, p. 307; *Kātyāyana*, 271; *Viṣṇu*, VII, 6-10; *Nārada*, IV, 137.
3. *Bṛhaspati*, VIII, 20-21.
4. *Nārada*, I, 143-144.

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the hand writing of the alleged executant, the tenor of the document, peculiar marks, circumstantial evidence and the probability of the case. Inquiry should also be made as to the previous connection between the parties and reasonable inferences should also be resorted to.

As regards the proof of documents, *Viṣṇu* says:[1]

If any dispute arises about the genuineness of a document, its authenticity is to be ascertained by comparing it with the other admitted writing of the person in regard to the letters or signs, by taking into account the probabilities of the case and by finding out other writings that may tally with the disputed writing.

Again he says that if parties to the document or witnesses or scribe be dead, the authenticity of the document has to be ascertained by comparing it with the disputed writings and other specimens of their hand writings.[2] *Kātyāyana* states the striking rule that when a document bears the royal seal that document is presumed to be authentic, even though all the three (viz. the debtors, the witnesses and the scribe) are dead.[3]

Yājñavalkya says that for proving a document, the following points should be observed:[4]

(1) The writing of the party should be carefully examined.
(2) Inferences should be drawn after reasonable consideration.
(3) By evidence of the contract which the instrument records.
(4) By a peculiar mark.
(5) By connection and dealings of parties.
(6) By the contents of the document.
(7) By previous recourse to measures of recovery.

Kātyāyana says that just as the reflection of a person or thing made in a mirror is seen as if it were real though it is

1. *Viṣṇu*, VIII, 12.
2. Ibid., 13.
3. *Kātyāyana*, 447.
4. Colebrooke Digest, I, CC, LXXXIX, p. 401.

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unreal, so clever people can fabricate documents resembling (the genuine writing of a person).[1]

Vyāsa[2] and *Bṛhaspati*[3] say the same thing and add that documents have to be carefully scrutinized and that no certain conclusion can be established by documents alone (in every case) that women, minors and illiterate persons are deceived even by their relatives by the fabrication of documents bearing the names of these (women and others) and that this has to be investigated with skill.

Cancellation of Documents

Nārada says that an obligation created by a writing can be cancelled only by another writing and an attested bond can be annulled by witnesses. If a document is split or torn, or stolen, or effaced, or lost, or badly written, another document has to be executed.[4] He further says that if a document is split or torn or effaced or stolen or lost or badly written—it should be replaced by another document.[5] Where the original document is not forthcoming, *Nārada* says that a secondary evidence as to its contents is permissible.[6]

> When a document has been transferred into another country or burnt or badly written (so as to be intelligible) or stolen—some delay must be granted for its production. In case it still exists. But if no longer exists the evidence of persons who have seen it decides the matter.

Yājñavalkya, *Dipakalita* and *Viṣṇu* are unanimous on their opinion about proof of the clearance of loans. When the debtor has paid the debt they suggest that the writing should be torn or another document be created as his acquittance. If a debt has been contracted before witnesses, it must be discharged before witnesses.[7]

1. *Kātyāyana*, 308; *Smṛtichandrikā*, II, p. 65
   दर्पणस्यं यथा बिम्बमसत्सदिव दृश्यते ।
   तथा लेख्यस्य बिम्बानि कुर्वन्ति कुशला जनाः ॥
2. Quoted by *Aparārka*, p. 688.
3. SBE, XXXIII, p. 30, VV, 20-21.
4. *Nārada*, I, 145.
5. Ibid., 146.
6. Ibid., 142.
7. Colebrooke Digest, I, CC, LXXXII, p. 389.

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If a debt is paid little and little, the payments must be credited on the back of the bond or separate receipts should be signed by the creditor by his own hand.[1] *Yājñavalkya* lays down that if the instrument be inaccessible in another country or written in a wrong form or destroyed or be illegible or stolen or gnawed by vermin or burnt or torn—the debtor must give another writing.[2]

Possession

The word possession is expressed by the derivative '*bhuj*' —means 'to enjoy, use, possession'. It is the exercise of such a power over a thing as attaches to lawful ownership. The theory of possession relates to the law of property and prescription. It is prima facie proof of title. A title is gained by long possession and lost by silent neglect. A former partition is proved by separate acts of ownership. Possession of a part confirms a right to the whole.[3]

Bṛhaspati says that one loses one's property if one cannot prove possession or produce documents of title or adduce oral evidence.[4] He again says that when the present occupant is impeached, a document or witness is regarded as decisive. After his death, possession alone is decisive for his sons.[5]

If undisturbed possession is maintained for three generations, *Bṛhaspati* says, it is not necessary to produce a title.[6] According to him, in such cases, possession itself is decisive. Impressing upon the vitally important role played by possession he asserts:[7]

> A witness prevails over inference, a writing prevails over witnesses; undisturbed possession which has continued through three lines prevails over both.

Possession may be with title '*sāgama*' or without title *anāgama*. '*Āgama*' means 'origin' or source of title such as

1. Ibid.
2. Colebrooke Digest, I, CC, XCI, p. 402.
3. Colebrooke Digest, IV, Chapter VI.
4. *Bṛhaspati*, IX, 19.
5. Ibid., 25.
6. Ibid., 27.
7. Ibid., 32.

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purchase or simply title.[1] *Manu*,[2] *Yājñavalkya*[3] and *Nārada*[4] employ that word in that sense. If property is held in one of the modes of acquiring ownership stated above and there is also possession one's right to that property is indefeasible,[5] but possession without a clear title does not lead to ownership.[6] *Vyāsa* and *Pitāmaha* declare that possession in order to be valid must have five characteristics, viz.[7]

(i) It must have title behind it,
(ii) Must be of long standing,
(iii) Unbroken,
(iv) Free from protest by another person, and
(v) In the presence of the opponent.[8]

Even title, if not accompanied by some slight possession, has no strength, while title is stronger than possession not handed down hereditarily.[9] *Nārada* states that possession becomes strong when backed by clear title.[10]

These passages present some difficulty and make title and possession depend on each other. *Nārada* states that even if there be a document or witness to support a man's title, when there is no enjoyment, particularly in the case of immovable property, there is no validity. All that is meant is that a transfer without possession though under a deed or before witnesses is risky and that title and possession lend support to each other as stated by *Nārada*.[11] He further says that

1. *Mitākṣarā* on *Yājñavalkya*, II, 27.
2. *Manu*, VIII, 200.
3. *Yājñavalkya*, II, 27.
4. *Nārada*, IV, 84.
5. *Nārada*, IV, 85; SBE, XXXIII, pp. 309 and 312.
6. *Bṛhaspati* quoted by *Smṛtichandrikā*, II, 70
   भुक्त्या केवलया नैव भूमिः सिद्धिमवाप्नुयात् ।
   आगमेनापि शुद्धेन द्वाभ्यां सिद्धयति नान्यथा ॥
7. *Vyāsa* quoted by *Smṛtichandrikā*, II, 71
   सागमो दीर्घकालश्चाविच्छेदोऽपरवोज्झितः ।
   प्रत्यर्थिसंनिधानश्च पञ्चाङ्गो भोगइष्यते ॥
8. *Mitākṣarā* on *Yājñavalkya*, II, 27 and *Aparārka*, p. 635.
9. *Yājñavalkya*, II, 27.
10. *Nārada*, IV, 85.
11. *Nārada*, IV, 77, 84-86.

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one who pleads mere possession and no title at all should be considered a thief on account of his putting forward the deceptive plea of possession (which even a thief can assert) and that the king should punish as a thief one who enjoys a property even for hundred of years without title.[1]

All that this last verse means is that the person in possession must prove legal origin or such a long possession that there is no possibility of an inference that the possession of his ancestor originated is wrong. Delivery of possession was the chief mode of transferring ownership in ancient times in almost all systems of jurisprudence and so possession was given great weight as evidence of ownership.

The *Mitākṣarā* on *Yājñavalkya*[2] makes the position clear. In the case of a gift or sale there must be the cessation of the ownership of the transferor and the arising of the ownership of the transferee. This last occurs only when the transferee accepts the property and not otherwise. Acceptance is mental, vocal and physical. These three may exist in the case of such movable articles as gold and clothes. But in the case of a field physical acceptance is not possible except by enjoying the fruits or profits thereof. Therefore in order to make a gift or sale perfect, there must be some slight possession at least. In the absence of such possession mere title is weak.

Title may succeed against the man in possession who has no title and who has not been in possession for the prescribed period (such as three generations). If the possessor proves possession for that period he will succeed against one who has bare title and no possession whatever.

Where the possession has been uninterruptedly with a man's ancestors for three generations he will succeed against one who has bare title. Hence possession was not absolutely indispensable for transfer even according to the *Mitākṣarā* and other works but title without possession was risky and so possession was insisted upon. It follows according to the *Mitākṣarā* that

(1) when possession was comparatively of short duration and not supported by any title much weight was not

1. *Nārada*, IV, 86-87.
2. *Yājñavalkya*, II, 27.

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attached to possession and title by itself would prevail against it,

(2) continuous possession for three generations (though there is nothing to show there was little to begin with) will prevail over a mere documentary title and that

(3) a prior title with less than the possession for three generations (but with some possession) succeeds over a later title accompanied by possession.

Long possession was assumed to have originated it in legal title although owing to lapse of time it was not possible to prove the origin. *Yājñavalkya* literally translated means 'loss of land results in twenty years when it is enjoyed by a stranger before the owner's very eyes and without any protest from him and loss of chattels (results under similar circumstances) in ten years'.[1]

Manu[2] and *Nārada*[3] have two verses in common which mean—

If the owner of anything silently looks on (i.e. raises no protest) when it is being enjoyed in his presence for ten years by strangers he does not deserve to recover it (i.e. he loses the thing).

When the owner is not an idiot nor a minor and his property is enjoyed within his sight there the property being lost by his conduct (*Vyavahāra*) courses to belong to enjoyer.

Gautama has almost the same words as *Manu*.[4] These passages apparently mean that at the end of 20 or 10 years of

1. *Yājñavalkya*, II, 24.
2. *Manu*, VIII, 147-148.
3. *Nārada*, IV, 79-80.
4. *Gautama*, XII, 34
   अजडापोगण्डधनं दशवर्षभुक्तं परैः सन्निधौ भोक्तुः ।
   cf. *Manu*, VIII, 147-148
   यत्किंचिद्दश वर्षाणि सन्निधौ प्रेक्षते धनी ।
   भुज्यमानं परैस्तूष्णीं न स तल्लब्धुमर्हति ॥
   अजडश्चेदपोगण्डो विषये चास्य भुज्यते ।
   भग्नं तद्व्यवहारेण भोक्ता तद्द्रव्यमर्हति ॥

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adverse possession by the wrongful possessor the ownership of the original owner is lost and the wrongful possessor becomes the owner. But there are several other *Smṛti* passages where it is said that possession even for a hundred years originating in wrong cannot counter title and much longer periods are required for the loss of ownership and the acquisition of ownership by prescription.

Nārada says that possession requires to be supported by title only during *Samārtakāla* (during human memory), but in case beyond human memory possession continued successively for three generations (or ancestors) is proof of ownership even in the absence of a document (or other title).[1] *Viṣṇu* is in similar terms.[2]

The *Mitāksharā* on *Yājñavalkya* says that *Samārtakāla* is a period of 100 years, as the *veda* declares that the span of a man's life is 100 years. For a hundred years it is possible for witnesses to depose to the origin of possession. So if there is possession for less than one hundred years, oral evidence can be adduced for establishing its origin and title will have to be proved by the possessor and if no oral evidence is adduced to prove title it is a case in which it may be held as certain that there was no title to begin with. Man possession is not enumerated by sages like *Gautama* among the means of acquiring ownership.

Kātyāyana states:[3]

> In cases falling within the memory of man it is desirable that possession must be accompanied with title (in order to be proof of ownership as to land); but in cases beyond the memory of man possession extending over three generation in succession (is independent proof of

1. *Nārāda*, IV, 89.
2. *Viṣṇu*, V, 187.
3. *Kātyayāna*, 321

   मुख्या पैतामही भुक्तिः पैतृकी चापि संमता ।
   त्रिभिरेतैरविच्छिन्ना स्थिरा पटन्याध्दिकी मता ।।
   वर्षाणि विंशति भुक्ता स्वाभिनाऽव्याद्ददतासती ।
   भुक्तिः सा पौरुषी मुक्तिर्द्विगुणा च द्विपौरुषी ।
   त्रिपौरुषी च त्रिगुणा न तत्रान्वेस्य आगमः ।।

   cf. *Brhaspati* quoted in SBE, XXXIII, p. 313, vv. 26-28.

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ownership) since there is no certainty that there was no title (to begin with).

'Three generations' according to P.V. Kane is a vague expression.[1] The great grandfather, the grandfather and the father of a man may die in the space of ten years and if the great grandfather took possession wrongfully and all died within ten years of the time of taking possession one after another, the fourth in descent might urge that there was possession for three generations and that he had become owner. So *Kātyāyana* in another verse laid down that unbroken possession for three generations extending over sixty years becomes firm (independent means of proof of ownership).[2]

Thus *tripuruṣabhoga* or *pūrvakramāgatabhoga* means the same thing as possession continuing from a time beyond human memory (as *mārta-kāla)* and is equal to 60 years according to *Kātyāyana, Vyāsa* and a few other *Smṛti* writers.[3]

Nārada says that as regards possession one generation means twenty years, while *Bṛhaspati* says it means thirty years.[4] It will be noticed from the above that early authors like *Gautama, Manu* and *Yājñavalkya* appear to lay down 20 years adverse enjoyment of land as sufficient to create ownership, while other and comparatively later authors like *Nārada* and *Kātyāyana* require sixty years' enjoyment. In order to remove this conflict and following the maxim that apparently conflicting texts should be reconciled as far as possible, the writers of commentaries and digests from *Viśvarūpa* and *Medhātithi* (on *Manu*, VIII, 148) downwards proposed various interpretations of *Yājñavalkya* (II, 24) and similar texts.

Some lay emphasis on possession and others on title. There are at least three explanations. *Aparārka, Kullūka* and *Raghunandana* take the literal sense and say that on 20 years adverse possession there is a loss of ownership.[5] The second explanation is that the meaning of *Yājñavalkya* (II, 24) is that after 20 years' enjoyment by a stranger, if the owner brings a suit and

1. HDS, III, p. 322.
2. *Kātyāyana*; 318; quoted by *Aparārka*, p. 636; cf. VP, p. 155.
3. *Yājñavalkya*, II, 27.
4. Quoted by *Aparārka*, p. 636; cf *Smṛtichandrikā*, II, p. 72.
5. *Aparārka*, pp. 631-632.

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relies on a document in his favour he runs the risk of being unable to prove his ownership barely on the strength of the document, since it is possible to argue that, even though he had a document, by his silence he acquiesced in the stranger taking possession and tacitly consented to it. Therefore all that *Yājñavalkya* (II, 24) means or recommends is that an owner should not be negligent (*upeksha*) or should not remain silent when a stranger takes wrongful possession. This view was first stated by *Viśvarūpa* among extant writers and it approaches the modern idea of requiring vigilance in the assertion of one's rights, that is there is only loss of the suit.[1]

This view lays emphasis on a verse attributed to *Nārada* and the word *Vyavahāra* in it and in *Manu* (VIII, 148) and *Nārada* (IV, 80), where the word means law-suit also, the idea being that the sages declare only what would happen or be decided by the judges in a law court and do not intend to say that the decision would be just or righteous from the higher or the moralist's point.

The third view is that of the *Mitāksharā* which explains that the loss is not that of the ownership of the thing itself but of the produce of it i.e. if without protest the owner allows a stranger to remain in possession before his very eyes for twenty years and then he brings a suit, he may succeed in getting back his land but he would lose his claim to the profits of the land.[2] The *Mitāksharā* and VP contain very elaborate discussion on *Yājñavalkya* (II, 24) but consideration of space forbids any further reference to them.

The *Mitāksharā* and others point out that *Yājñavalkya* (II, 24) conveys that if a stranger takes possession while the owner is absent or if the owner protests then even 20 years' possession does not lead to the loss of anything. The text of *Nārada* (IV, 87) shows that the sage held that possession for several hundred years even would not avail the possessor if it is certain or established that the possessor had no title at all to

1. *Viśvarūpa* on *Yājñavalkya*, II, 26
   उपेक्षां कुर्वतस्तस्य तूष्णींभूतस्य तिष्ठतः ॥
   कालेतिपन्ने पूर्वोक्तो व्यवहारो न सिध्यति ।
2. तस्मात्स्वाम्युपेक्षालक्षणस्वापराधदस्माच्च ॥
   वचनाद्विंशतेरूर्ध्वं कलं नष्टं न लभतशति स्थितम् ॥

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begin with or that his possession started wrongfully. This text is emphasized by those who favour title and want to discourage persons benefiting by their own wrong-doing. But there are other *Smṛti* texts of a contrary tenor. For example *Nārada* himself says:[1]

> Whatever has been enjoyed even unlawfully for three generations (i.e. by three ancestors) including the father cannot be recovered by the owner from the person (who is the 4th in succession) because it has gonethrough three lives in succession.

Bṛhaspati lays down the proposition that if aperson has title and is already in possession and is dispossessed by another then he may succeed in a law-suit on the strength of his prior possession provided the dispossessor does not establish continuous possession for three generations.[2]

Again *Bṛhaspati*[3] and *Kātyāyana*[4] state that what is enjoyed by a man's agnates and cognates and his own people does not pass to their ownership by their mere possession, one should regard possession (as leading to ownership) in cases other than those. *Pitāmaha* states that possession by a stranger is powerful, but possession by members of one's own family has certainly not the same force.[5]

It is stated in *Gautama*[6] that property which is enjoyed for a long time by a *Śrotriya*, an ascetic or a king's officer is not lost to the owner by that enjoyment, since the owner may have thought that he would reap long enduring spiritual merit by the first two enjoying this property (such as a vacant house)

1. *Nārada*, IV, 91.
2. SBE, XXXIII, p. 314, v. 31
   सत्यपि विच्छेदे सागमा भुक्तिः प्रमाणमित्याह बृहस्पति ॥
   भुक्तिबलवती शास्त्रे ह्याविच्छिन्ना चिरन्तनी ।
   विच्छिन्नायिम्हे सा ज्ञेया या तु पूर्वप्रसाधिता ॥
3. Ibid., p. 310, v. 11.
4. *Kātyāyana*, 335
5. सनाभिभिबन्धिवैश्च यद्भुक्तं स्वजनैस्तथा ।
   भोगान्तत्र न सिद्धिः स्याद्भोगमन्यत्र कल्पयेत् ॥ *Kātyāyana.*
   अस्वामिना तु यद्भुक्तं गृहक्षेत्रापणादिकम् ।
   सुहृद्बन्धु सकुल्यस्य न तद्भोगेन न हीयते ॥ *Bṛhaspati.*
6. *Gautama*, XII, 38.

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or that he might be prevented from asserting his right from fear (of the royal official).[1]

Manu,[2] *Nārada*,[3] *Vaśiṣtha*,[4] *Yājñavalkya*,[5] *Bṛhaspati*,[6] and *Kātyāyana*[7] state the following exceptions to the rule of loss by long possession:

(1) a mortgaged or pledged property,
(2) boundary,
(3) minor's property,
(4) an open deposit,
(5) a sealed deposit,
(6) women (female slaves),
(7) the property of the king (i.e. of the state),
(8) the property of a *Brāhmaṇa* learned in the *Veda* is not lost by the possession of another (for twenty or ten years referred to in *Manu* VIII, 147 and *Yājñavalkya* II, 24).

Yājñavalkya adds to the above list the properties of idiots and of women.[8] *Manu* provides that neither a pledge nor a deposit can be lost by lapse of time and that both are recoverable even if they have remained long (with the pledgee or depositee).[9] *Nārada* emphatically states that women's property and state property (land) is not lost even after hundreds of years, when it is enjoyed without title.[10] *Kātyāyana* adds to the above list temple property and what is inherited from the father or mother.[11]

All systems of jurisprudence throw protection round the interests of minors, persons of unsound mind and others similarly situated and provide longer periods of possession for loss of their right. The *Mitākṣharā* on *Yājñavalkya* (II, 25) gives reasons why the several exceptions are made:

1. SBE, XXXIII, p. 311, v. 12.
2. *Manu*, VIII, 149.
3. *Nārada*, I, 5, 8.
4. *Vaśiṣtha*, XVI, 18.
5. *Yājñavalkya*, II, 25.
6. *Bṛhaspati*, SBE, XXXIII, 312, v. 21.
7. *Kātyāyana*, 330.
8. *Yājñavalkya*, II, 25.
9. *Manu*, VIII, 145.
10. *Nārada*, IV, 83.
11. *Kātyāyana*, 330.

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In the case of a pledge or mortgage the property is enjoyed by the pledgee or mortgagee under agreement and so there is no fault on the part of the owner if he remains quiet while the property is being enjoyed by the creditor; boundaries between villages can be easily established by such signs as trees (growing on the border), streaks of cliff and coal (buried underground), deposits are entrusted to a person out of confidence for being preserved and not for enjoyment; idiots and minors are ignorant or incapable of understanding their rights; the king being engrossed in numerous state affairs may not be able in time to look into the question about possession of state properties; women on account of their ignorance and timidity may not assert their rights and a learned *Brāhmaṇa* being devoted to learning, teaching and performance of rites and duties may have no time to go to law.

Kātyāyana prescribes that in the case of a *Brahmachārī*, engaged in his vow of *veda* study extending over 36 years, and in the case of a man who remains in a foreign country in pursuit of wealth, enjoyment extending over 50 years will alone make him lose his property by the possession of another, that when a person has been a student for a shorter period than 36 years, he may get longer additional periods proportionately and that when a person is in jail time does not run against him.[1]

Witness

Witness is a person who has seen or known something and is therefore competent to given evidence concerning it. He is a beholder or spectator also. He gives evidence in a case testifying on oath or affirmation in a judicial proceeding since he has knowledge of facts relating to a given cause and is supposed to testify.

The knowledge of the witness is based on what he has seen or what he was present and what he has understood and he is primarily an eye-witness or an ear-witness, yet indirect witnesses too are known who are somehow instructed by a direct

1. *Kātyāyana*, 331-334; *Smṛtichandrikā*, II, p. 69.

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witness or who somehow manage to get wind of the statements made by the direct witness.

The law-giver *Manu* is communal also in the matter of witnesses. According to him persons entering into contracts should take as witnesses persons of the same sex or group. That is women for women's contracts; *Brāhmaṇas* for *Brāhmaṇas*; *Śūdras* for *Śūdras* and so on.[1] It is easy to understand why the law-giver ordained this regulation. Members of the same community could better appreciate the motives of the members entering on contractual or other agreements. This rule was also necessary as customary law has a very great importance in the *Hindu* law. Persons in the same order are in perfect knowledge of the different customs of the groups and, therefore, form appropriate witnesses. This verse again is important from another point of view. Here women—the weakest, Śūdra—the most important and untouchable—the lowest are treated as equals with the *Brāhmaṇas* on points of law. He further says—"He ought not to assert a fact of which he was not an eye-witness,[2] and a witness must declare exactly what he saw or heard."[3]

This indicates that the evidence of a witness must be direct and should not be what is called hearsay. *Medhātithi*[4] says that hearsay evidence occurs when a person who hears from

1. *Manu*, VIII, 68
   स्त्रीणां साक्ष्यं स्त्रियः कुर्युर्द्विजानां सदृशा द्विजाः ।
   शूद्राश्च सन्तः शूद्राणामन्त्यानामन्त्ययानेयः ॥
2. *Manu*, VIII, 95
   अन्धो मत्स्यानिवाश्नाति स नरः कण्टकैः सह ।
   यो भाषतेऽर्थं वैकल्यम प्रत्यक्षं सभां गतः ॥
3. Ibid., VIII, 76
   यत्रानिबद्धोऽपीक्षेत शृणुयाद्वांऽपि किञ्चन ।
   पृष्टस्तत्रापि तद् ब्रूयाद्यथादृष्टं यथाश्रुतम् ॥
4. On *Manu*, VIII, 74
   समक्षदर्शनात्साक्षादनुभवाच्छ्रवणाञ्च समक्षशब्दानुषङ्गः कर्त्तव्यः ।
   यन् कुतश्चिदेकेन श्रूयते ततोन्येन तत्परांश्रुतं तेन परम्पराश्रावी न साक्षी ॥
   चक्षुषा श्रोत्रेण वा येन विवाद विषयः पूर्वं प्रमितः स तत्र साक्षीत्यर्थः ।
   तेन यो विवाद विषयो येन प्रमितः स तत्र साक्षित्वेनाकृतोपि साक्षी
   भवतीति सिध्यति इतरथा वेतनादादिषु विवादेषु लिखिता दीनाम
   पृसम्भवेन साक्ष्य भाव प्रसङ्गः ॥

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another that has himself heard something from another comes forward as a witness and that hearsay is no legal evidence.

Manu prescribes that even though a man may not have been expressly asked or appointed by the parties (in the words you are the witness to this transaction), he is a proper witness when asked as to any matter in dispute that he has himself seen or heard. The only exception to hearsay evidence allowed by the *Viṣṇu*[1] is that when a person that is appointed as a witness is dead or gone abroad, those who have heard what he said may give evidence.

Nārada says:[2]

> He who is not a brother, a father, or a son, or an agent should be punished if he speaks what is not a fact in any litigation.
>
> In doubtful cases of quarrel between two parties, the truth is to be gathered from the deposition of witness, whose knowledge is based on what has been seen, heard or understood by them.

Āpastaṁba states that a witness should depose the truth on an auspicious day in the morning in the presence of kindled fire and near (a jar of) water in the hall presided over by the king (or chief justice) and after being exhorted as regards both (viz. the results of truthfulness and falsehood) and when accepted by all (the court and the parties) as a competent witness.[3]

Kātyāyana prescribes that the king (or the chief judge) should himself examine the witnesses that are present (in court) and should consider alongwith the *Sabhyās* the statements made by witnesses and that, where it is doubtful who the witnesses on a disputed matter are, time should be given for producing the witnesses in order to ascertain the proper means of proof

1. *Viṣṇu*, VIII, 12
   अदृष्ट साक्षिणि मृते देशान्तरगते वा तदभिहितश्रोतार: प्रमाणम् ॥
2. *Nārada*, I, 147, cf. *Gautama*, XIII, 1; *Kātyāyana*, III, 11.
3. *Āpastaṁba*, II, 11, 29, 7
   पुण्याहे प्रातरग्नाविद्धेऽग्नामन्ते राजवत्युभयत: समाख्याप्य ।
   सर्वानुमते मुख्य: सत्यं प्रश्नं ब्रूयात् ॥

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but that where it is clear who the witness may be he should make the hearing of the case proceed at once.[1]

Witnesses were compelled to attend. *Kauṭilya* says that witnesses who are not far removed by time or space should be produced by the parties themselves, but those who are far away or who are unwilling to stir shall be got summoned by order of the king.[2] They were to depose on oath. They should speak nothing but truth. But *Gautama* shows himself the most practical of the law-givers by saying that a witness can utter even a falsehood to save a good soul; and thereby does not incur the sin of speaking an untruth. This is absolutely forbidden in the case of a wicked person. That evidence is quite imperative is shown by Yājñavalkya who remarks wisely, 'even a fact unsupported by evidence gets vitiated in a legal procedure'.[3]

Kinds of Witnesses

Eleven descriptions of witnesses are distinguished in law by the learned. Five of them are termed appointed (*Kṛta*) and the other six are not appointed (*akṛta*) as according to *Nārada*.[4] The following are the appointed witnesses:

(1) A subscribing witness.

(2) One who has been reminded i.e. one who is called as a witness without there being a document and who is present at a transaction and is again and again reminded of it by a party to it in order that the transaction may be effectively proved thereafter.[5]

(3) A casual witness i.e. one who, while a transaction is being entered into, comes there by mere chance and is then asked to be a witness.

1. *Kātyāyana*, 340-341; VM, p. 331; *Smṛtichandrikā*, II, p. 92.
2. *Kauṭilya*, III, 11
   देशकालाविदूरस्थान साक्षिणः प्रतिपादयेत् ।
   दूरस्थानप्रसारात्वा स्वामिवाक्येन साधयेत् ॥
3. *Yājñavalkya*, II, 19.
4. *Nārada*, I, 149-152.
5. cf. *Kātyāyana*, 371 & 372 quoted in *Mitākṣarā* on *Yājñavalkya*, II, 68.

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(4) A secret witness i.e. one who is made to listen to the speech of the debtor while concealed behind a wall or screen.

(5) An indirect witness i.e. one who learns from a witness who has seen or heard of a transaction when the latter is going to a distant country or is on the point of death. These witnesses were called in by the parties for the authentication of purchase and sale, deposit and other legal transaction.

The second category consists of the following types:

(1) Co-villagers (in disputes about boundaries),
(2) The chief judge,
(3) The king (before whom a suit was tried),
(4) One who is closely acquainted with the transaction of the parties,
(5) One who is deputed by a party (for borrowing an ornament or for settling a transaction, called *Dūtaka* by Bṛhaspati),
(6) Members of the family (*Kulya*) in disputes among other members of the family.

Bṛhaspati has classified witnesses into the following twelve kinds:[1]

(1) A subscribing witness
He is a witness by whom a document is attached and who enters in a deed his own as well as his father's caste, name, and so forth, and his place of residence.

(2) One caused to be written
Distinctly entered in the deed together with the details of the agreement by the plaintiff when writing a contract of loan or another's (contract).

(3) One who has been reminded
He is a witness, who, though not entered in the deed, is repeatedly reminded of its contents.

(4) A stranger
Who happens to witness the deed accidentally.

1. *Bṛhaspati*, VII, 1-15.

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(5) A secret witness

One who concealed in a house or a room, listens to the discourse of the party and relates them just as they were spoken, when the debtor tries to deny them.

(6) A family witness

He is a member of the family in regard to family quarrels. He is appointed by both parties to witness a deed of partition, gift or sale being connected with and on good terms with them and acquainted with the rules of duty.

(7) A messenger

A respectable man esteemed and appointed by both parties who has come near to listen to their speeches (plaintiff and defendant).

(8) A spontaneous witness

He is that person who comes in midst of a case and declares that he is cognisant of the facts of the case and offers himself as a witness.

(9) An indirect witness

He is a witness who has no actual knowledge of a fact but who repeats what he has learnt from hearsay.

(10) The villagers

Villagers may be witness in matters relating to their own village such as boundary line.

(11) The chief judge and the assessors

They may act as witnesses, if after the decision of a suit a fresh trial takes place.

(12) The king

The king in person having heard the speeches of the parties to a litigation may act as a witness if they should fall out.

Nārada gives a very interesting account of the relative importance of some of the foregoing witnesses so far as the duration of validity of their deposition is concerned:[1]

1. *Nārada*, I, 167-171.

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(1) The deposition of a subscribing witness retains its validity even after a great lapse of time.
(2) Deposition of a witness who has been reminded of the transaction remains valid upto the eighth year.
(3) Deposition of casual witnesses upto the fifth year.
(4) Deposition of secret witnesses upto the third year.
(5) Deposition of indirect witnesses—for one year only.

Of course, this rule cannot be absolute since testimony depends on memory and therefore, no definite period can be fixed for judging a witness. A witness whose understanding, memory and hearing have never been impaired or deranged may give evidence even after a very considerable lapse of time.

Dignification of Truthful Witnesses

Manu says:[1]

A witness who speaks the truth in his evidence, gains (after death) the most excellent reasons of bliss and here unsurpassable fame, such testimony is revered by *Brāhmaṇa* (himself).

He glorifies truthfulness in his following statement:[2]

By truthfulness a witness is purified, through truthfulness his merit grows; truth must, therefore, be spoken by witnesses of all castes (*Varṇa*).

Gautama states that 'a witness telling the truth goes to heaven, but falls into hell if he does the reverse and when he deposes falsely he is to be censured and fined'.[3]

Condemnation of False Witnesses

In various texts rewards for truthful witnesses and severe punishments to the false have been prescribed. The punishment by the king was considered to be nothing in comparison to what was ordained by religion. To this fact, may be ascribed the natural disinclination of *Hindus* to appear as witnesses

1. *Manu*, VIII, 81.
2. Ibid., 83.
3. *Gautama*, XIII, 7 and 23
   पृथक्पृथग्दण्डनीयाः कूटकृत्साक्षिणस्तथा ।
   विवाद द्विगुणं दण्डं विवास्यो ब्राह्मणः स्मृतः ॥
   cf. *Āpastaṁba*, II, II, 29, 9, 10.

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false witness owing to these portentous happenings) made to pay the debt in dispute to the opposite side and a fine to the king.

Cases in which falsehood was permitted

The *Smṛtis* mention only a single case of permissible perjury, namely when the life of a man, particularly of a *Brāhmaṇa* is at stake, yet the sin committed through such an untruthful act, has to be expiated for by a sacrifice.[1] Although under usual circumstances the witnesses were supposed to speak the truth, only in exceptional circumstances enumerated below, they could depart from the truth:

(1) If a witness, who knowing the facts to be otherwise, gives false evidence from a pious motive does not lose heaven. Such evidence is tantamount to the speech of the gods.[2]

(2) A falsehood is permissible and is preferable to the truth if a truthful declaration results in the death of a *Brāhmaṇa*, a *Kshatriya*, a *Vaiśya*, or a *Śūdra*.[3] But this rule does not hold good if the life of a very wicked man is concerned.[4]

(3) No crime is considered to be committed by swearing falsely to women for the purpose of securing them in marriage.

(4) For the sake of fodder for a cow or for fuel, falsehood was permitted.

(5) In order to show favour to a *Brāhmaṇa*, false statements could be given.

(6) According to *Vaśiṣtha* an untruth is allowable at the time of marriage, during dalliance, when their lives are in danger or the loss of whole property is imminent and for the sake of a *Brāhmaṇa*. One does not become an outcaste by speaking falsehood in these five cases.[5]

1. *Viṣṇu*, VIII, 15-17; *Gautama*, XIII, 24
2. *Manu*, VIII, 103, 104 & 112.
3 *Viṣṇu*, VIII, 15.
4. *Gautama*, XIII, 24-25.
5. *Vaśiṣtha*, XVI, 35.

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Bṛhaspati directs:[1]

Let the witness preserve, even by telling a lie, a *Brāhmaṇa* who has once sinned through error and is in peril of his life and is oppressed by rogues or other foes.

It is worth notice that in such cases when a false evidence was given, certain penances were prescribed.[2]

Competent Witnesses

About the competence of personnel to be considered as reliable and trustworthy witnesses, the following points have been laid down although in all cases of violence, theft, adultery, defamation and assault it was not necessary for the judge to examine the competence of witnesses too strictly:[3]

(1) A *Brāhmaṇa* was not to be forced to give his deposition at the word of a non-*Brāhmaṇa* unless he is mentioned in the plaint.

(2) Trustworthy men of all four castes, who know their whole duty and who are free from covetousness may be made witnesses in law-suits but men of an opposite character are to be discarded.[4]

(3) In family quarrels, members of that family shall be witnesses.[5]

(4) Members of the four castes—*Brāhmaṇa*, *Kshatriya*, *Vaiśya* and *Śūdra* were supposed to be witnesses of their own caste only but when occasion so required, for members of any other caste.[6]

1. *Bṛhaspati*, VIII, 34.
2. *Manu*, VIII, 105-106

   वाग्दैवत्यैश्च चरुभिर्यजेरंस्ते सरस्वतीम् ।
   अनृतस्यैनसस्तस्य कुर्वाणा निष्कृतिं पराम् ॥
   कूष्माण्डैर्वापि जुहुयाद्घृतमग्नौ यथाविधि ।
   उदित्यृचा वा वारुण्या तृचेनाब्दैवतेन वा ॥

3. *Viṣṇu*, VIII, 60; *Manu*, VIII, 72.
4. *Manu*, VIII, 63.
5. Ibid., 72.
6. *Nārada*, I, 154; *Gautama*, VIII, 3; *Yājñavalkya*, II, 69; *Vaśiṣtha*, XVI, 29; *Baudhāyana*, I, 19, 1; *Manu*, VIII, 62.

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If a witness being summoned does not appear without being ill, he should be made to pay the debt and a fine after the lapse of three fortnights.[1] *Yājñavalkya* provides that if a witness having promised with other witnesses to depose to a state of things, denies at the time of his examination that he saw the matter in dispute he should be fined eight times the amount that a defeated litigant would have to pay and a *Brāhmaṇa* witness similarly guilty if unable to pay may be banished (or his house should be razed to the ground).[2] *Nārada* says that such a person is worse than a false witness.[3] *Āpastaṁba* states—'When a witness deposes falsely the king should fine him and, in addition, the witness incurs hell after death'.[4]

False witnesses are punished with fines and banishment. Bribed witnesses have to pay particularly heavy fines and bribing or seducing to give false evidence is likewise punished with heavy fines and with the confiscation of property and banishment and leads to the loss of the suit. The last punishment is also inflicted on him who tries to influence the witnesses of the opposite party in his favour.[5]

A false witness shall be fined one thousand *paṇas* if he perjures himself through covetousness:[6]

(i) In the lowest amercement (an assessment levied at the direction of the court)—through distraction.
(ii) Two middling amercements—through fear.
(iii) Four times the amount of the lowest amercement——through friendship.
(iv) Ten times the lowest amercement—through lust.
(v) Three times the next amercement—through wrath.

1. *Bṛhaspati*, VIII, 31.
2. *Yājñavalkya*, II, 82
   यः साक्ष्यं श्रावितोऽन्येभ्यो निह्नुते तत्समोक्तः ।
   स दाप्योऽष्टगुणं दण्डं ब्राह्मणं तु निवासयेत् ॥
3. *Nārada*, IV, 197.
4. *Āpastaṁba*, II, II, 29, 8-9.
5. *Manu*, VIII, 120
   लोभात्सहस्त्रं दण्ड्यस्तु मोहात्पूर्वं तु साहसम् ।
   भयाद द्वौ मध्यमौ दण्डौ मैत्रात्पूर्वं चतुर्गुणम् ॥
   cf. *Yājñavalkya*, II, 81; *Kātyāyana*, VI, 26; *Nārada*, I, 165.
6. *Manu*, VIII, 123.

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(vi) Two full-hundred—through ignorance.
(vii) One hundred *paṇas*—through childishness.

A *Brāhmaṇa* shall be liable to be banished and men of the other castes both banished and fined for perjury (false swearing). Those who though acquainted with the facts and appointed to give evidence, stand mute are equally guilty and are liable to the same punishment as false witnesses.[1]

Yājñavalkya and *Kātyāyana*[2] prescribe that the litigant who procures perjured evidence and the witnesses guilty of perjury should each be separately fined double the amount of the fine prescribed for defeat in various disputes and a *Brāhmaṇa* (guilty of doing the same) should be banished from the country (but not fined).[3] But when a person (of any of the three castes other than *Brāhmaṇas*) is frequently guilty of perjury he should be fined and given physical punishment (as cutting the tongue or death) and a similarly guilty *Brāhmaṇa* should be fined and banished (or degraded by being carried naked through the streets or deprived of his house).

The *Mitākṣarā* on *Yājñavalkya*[4] states that when *Manu* prescribes[5] that a *Brāhmaṇa* guilty of a sin is not to be awarded death or corporal punishment and that he is to be banished with all his wealth, he refers to the *Brāhmaṇa* being a first offender and not a confirmed one. Manu says:[6]

> Where within seven days from deposing in a cause a (serious or painful) disease or fire or the death of a relative befalls a witness, he should be (being held as a

1. *Viṣṇu*, VIII, 37.
2. *Kātyāyana*, 407 quoted by *Aparārka*, p. 672
   येन कार्यस्य लोभेन निर्दिष्टाः कूटसाक्षिणः ।
   गृहीत्वा तस्य सर्वस्वं कुर्यास्निषियं ततः ॥
3. The *Mitākṣarā* explains *Vivāsana* in *Yājñavalkya*, II, 82, as follows:
   विवासनं च नग्नीकरणगृहभङ्गः देशनिर्वासनालक्षणं विषयानुसारेण द्रष्टव्यम् ।
   इयरेषां त्वस्टगुणद्रव्यदण्डदाना संभवे स्वजात्युचितकरणनिगडबंधनकारा ग्रहप्रवेशादि द्रष्टव्यम् ॥
4. II, 81.
5. *Manu*, VIII, 380
   न जातु ब्राह्मणं हन्यात्सर्वपापेष्वपि स्थितम् ।
   राष्ट्रादेनं बहिः कुर्यत्सिभग्रधनमक्षतम् ॥
6. Ibid., VIII, 108.

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in court of justice. It is not want of moral courage or any depravity of conduct or character that may be said to be the cause. Any error or accidental slip was also fraught with serious consequences. The best thing was considered to be avoidance since the path of coming as witness was so perilous.

Witnesses were strictly enjoined to speak the truth.

Manu lays down:[1]

> A witness who deposes in an assembly of honourable men, anything else but what he has seen or heard, falls after death headlong into hell and loses heaven.

He adds further:[2]

> A witness who speaks falsehood is firmly bound by *Varuṇa*, fetters, helpless during one hundred existences.

According to him, a false witness incurs all the penalties and is subject to all the places of torment that are assigned to the murderer of a *Brāhmaṇa*, to the slayer of woman and children, to the betrayer of a friend and to an ungrateful man.[3] He boldly declares that all meritorious deeds of a false witness in all his life became the share of the dogs.[4]

Vaśiṣtha considers false witness to be great sinner and curse. "Naked and shorn, tormented with hunger and thirst, and being quite blind, shall the false witness go with a potsherd to beg food at the door of his enemy."[5] He further says—"Those who gave partial evidence in a judicial proceeding for the sake of relative or for money, deprive the ancestors of their spiritual family and those of their natural family of their place in heaven."[6]

1. *Manu*, VIII, 75.
2. Ibid., VII, 82.
3. Ibid., VIII, 89.
4. Ibid., 90.
5. *Vaśiṣtha*, XVI, 33
   नग्नो मुण्डः कपाली च भिक्षार्थी क्षुत्पिपासितः ।
   अन्धः शत्रुकुले गच्छेद्यः साक्ष्यमनृतं वदेत् ।।
   cf. *Manu*, VIII, 93.
6. *Vaśiṣtha*, XVI, 36
   उद्वहकाले रतिसंप्रयोगे प्राणात्यये सर्वधनापहारे ।
   विप्रस्य चार्थे ह्यनृतं वदेयुः पञ्चाननृतान्याहुरपातकानि ।।

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Penalty for False Evidence

Severe penalties were provided for falsehood. It was not only the speaker of falsehood who was ensigned in hell but his sins were also considered to be vested on ancestors.

Vaśiṣtha says—'Besides the religious sanctions there is also social punishment. A false witness becomes an object of contempt in society and sometimes becomes an outcaste'.[1]

Manu states that witness deposes through covetousness, wrong ideas, fear, friendship, sexual passion, wrath, ignorance and minority and prescribes varying fines for perjury arising from these several causes.[2] He says that the wise have prescribed these fines for perjury for the sake of preventing a failure of justice and for restraining injustice.[3] And *Gautama* gives a ruling that witnesses should not speak singly unless they are asked and if being asked they do not answer they are guilty of a crime.[4]

Manu says:[5]

> A man who without being ill, withholds giving evidence in cases of loans and the like within three fortnights shall become responsible for the whole debt—and shall further pay a fine to the extent of the tenth part of the whole claim.

We find similar instructions in *Yājñavalkya*,[6] *Kātyāyana*,[7] *Bṛhaspati*,[8] and *Viṣṇu*.[9]

1. *Vaśiṣtha*, XVI, 35
   व्यवहारे मृते दारे प्रायश्चितं कुलस्त्रियाः ।
   तेषां पूर्वपरिच्छेदाच्छिद्यन्तेऽपवादिभिः ॥
2. *Manu*, VIII, 118
   लोभात्मोहाद्भयान्मैत्रात्कामात्क्रोधात्तथैव च ।
   अज्ञानाद्बालभावाच्च साक्ष्यं वितथमुच्यते ॥
3. Ibid., 122
   एतानाहुः कोटेसाक्ष्ये प्रोक्तान्दण्डान्मनीषिभिः ।
   धर्मस्याव्यभिचारार्थमधर्मनियमाय च ॥
4. *Gautama*, XIII, 5.6.
5. *Manu*, VIII, 107.
6. *Yājñavalkya*, II, 77.
7. *Kātyāyana*, 405.
8. *Bṛhaspati*.
9. *Viṣṇu*, VIII, 37.

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(5) Among companies of artisans or guilds of merchants other artisans or merchants were supposed to be witnesses and members of associations were to be the witnesses for other members of the same associations. Similarly, persons living outside for those living outside and woman for woman.[1]

(6) When any act was committed in the interior apartments of a house or in a forest or when they involved loss of life, any person whatsoever who had personal knowledge of these could give evidence between the parties.[2]

(7) In a suit by creditors, householders, men having male issue, indigenous inhabitants of the four castes are competent witnesses except in cases of urgency, other persons are not to be examined.[3]

(8) *Viṣṇu* says—'Descendants of a noble race who are virtuous and wealthy, sacrificers, devoted to the practice of religious austerity, having male issue, learned in the holy law, studious, veracious, versed in the three *vedas* and aged shall be competent witness. One witness of this description may be deemed sufficient.[4]

(9) *Manu* and *Vaśiṣtha* have given a ruling that woman should give evidence for woman, for twice born men of the same sect—twice born men; for virtuous *Śūdras*—*Śūdras* and men of the lowest caste for the lowest.[5]

In the absence of qualified witnesses, evidence could be given by a woman, an infant, an aged man, a pupil, a relative, a slave or by a hired servant.[6] In all such cases, the judge was to consider the evidence of infants, aged and diseased men and likewise of men with disordered minds as untrustworthy since such men were generally apt to speak falsehood.[7]

1. *Nārada*, I, 155; *Manu*, VIII, 68.
2. *Manu*, VIII, 69
   अनुभावी तु यः कश्चित्कुर्यात्साक्ष्यं विवादिनाम् ।
   अन्तर्वेश्मन्यरण्ये वा शरीरस्यापि चात्यये ।।
3. *Manu*, VIII, 62.
4. *Viṣṇu*, VIII, 9.
5. *Manu*, VIII.
6. Ibid., VIII, 70-71; cf. *Nārada*, IV, 190-191.
7. Ibid., VIII, 70-71.

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The principal qualifications of the witnesses are:[1]

(1) they should be born of a good family,
(2) should have lived hereditarily in the country,
(3) should be householders having a son or sons,
(4) should be well-to-do and men of character,
(5) should be trustworthy,
(6) should know *dharma* and act upto it,
(7) should not be covetous, and
(8) should have been cited by the parties as witnesses.

Incompetent Witnesses

The *Hindu* law instead of laying down abstract propositions has mentioned concrete instances of persons who are incompetent to be witnesses. The list is a long one, but if it is properly examined it will appear that something may be said against each and every one of them, and that the practical view that was taken was to avoid them altogether, instead of examining them and then rejecting them as unreliable.

Contemporary *Hindu* judges were very scrupulous in the matter of accepting oral evidence. They wanted to have their conscience satisfied by unimpeachable evidence instead of examining lots of interested witnesses and then discarding them as 'interested', they thought it better to exclude them as incompetent witnesses though in extreme cases, it was thought otherwise.

Besides the above, the judiciary expected the general public to be careful and to have their transactions carried out

1. *Gautama,* XIII, 2
   बहवः स्युरनिन्दिताः स्वकर्मसु प्रात्ययिका राज्ञां निष्प्रीत्यनभितापाश्चान्यतरस्मिन् ।
   cf. *Kauṭilya,* III, 11
   प्रात्ययिका शुचयोऽनुमता वा त्रयोवरार्घ्याः पक्षानुमतौ वा द्वौ ऋणं प्रति न त्वेवैकः ॥
   Viṣṇu, VIII, 8
   कुलजा वृत्तवित्त संपन्ना यज्वानस्तपस्विनः पुत्रिणो धर्मज्ञा अधीयानाः सत्यवन्तः त्रैविघवृद्धाः ।
   Sarasvatīvilāsa, p. 138
   मौलाः प्रतिष्ठिताः साक्ष्यर्थं विदितवन्तः कुलीना ऋजवो जन्मतः
   कर्मतोर्थतः शुद्धाः पुत्रिणः सत्यवादिनः श्रौतस्मार्त क्रिया युक्ता
   विगतद्वेष मत्सरा अप्रवासिनो युवानो लोभमोहविवर्जितास्त्यवरा
   नवसंख्याका न जातु कूटतां प्रति पद्यन्ते ॥

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(69) A rogue,
(70) A juggler,
(71) A seller of spirituous liquor,
(72) An avaricious or cruel man,
(73) An enemy of traders and clansmen,
(74) One who takes animal life,
(75) A leather manufacturer,
(76) A cripple,
(77) An outcaste,
(78) A forger,
(79) A quack,
(80) An apostate,
(81) A robber,
(82) King's attendant,
(83) A *Brāhmaṇa* who sells human beings, cuttle, meat, honey, milk, water,
(84) A member of twice born caste,
(85) One who takes interest on loan,
(86) One who neglects his duties,
(87) A judge,
(88) The head of a caste or guild,
(89) One who serves low people,
(90) One who quarrels with his father,
(91) One who causes dissensions, and
(92) Whose demeanour is quite suspicious.

Viṣṇu gives yet another formula. According to him the following persons cannot be made witnesses:[1]

(1) The king,
(2) A learned *Brāhmaṇa*,
(3) Ascetic,
(4) Gamester,
(5) A thief,
(6) A person who is entirely dependent,
(7) A woman,
(8) A child,
(9) One guilty of force consisting of robbery,
(10) Persons guilty of hurt or violence to a woman,

1. *Viṣṇu*, VIII, 2.5.

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(11) An overaged man,
(12) Intoxicated,
(13) Insane,
(14) Man of ill repute,
(15) An outcaste,
(16) One afflicted with hunger or thirst,
(17) One afflicted with sudden calamity,
(18) One wholly absorbed in evil passion,
(19) An enemy,
(20) A friend,
(21) A man having interest in the subject matter,
(22) One who does forbidden acts,
(23) One who gave false evidence in a previous case,
(24) An attendant,
(25) One who comes uncalled for to give evidence of his own accord, and
(26) One being the only man cited as a sole witness.

The last type of personnel enumerated above namely one being the only man cited as a sole witness may, however, be deemed sufficient, if he be of exceptional qualities. Besides this even one man alone could become a witness in a suit, if both parties consented to it. It was necessary for such a witness to be examined in public.[1]

The king in person having heard the speeches of the parties to the suit could act as witness if both quarrelled with one another. If after the decision of a suit, a fresh trial should take place, the chief judge together with the assessors could act as a witness but not in any other case.[2] He has enumerated the following among inadmissible witnesses:[3]

(1) Maternal grandfather,
(2) Uncle,
(3) Wife's brother,
(4) Maternal uncle,
(5) A brother, and
(6) A son-in-law.

1. *Nārada*, I, 192.
2. *Bṛhaspati*, VII 14
3. Ibid., VII, 29.

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viz. when a father while on the point of death tells his sons and the like 'these are the witnesses on such and such a matter', there even after the father's death those witnesses would be competent though death intervenes.

He gives an extensive list of incompetent witnesses:[1]

(1) One interested in the suit,
(2) A friend (or relative such as an uncle),
(3) An enemy,
(4) An associate,
(5) A notorious offender,
(6) A person tainted with a mortal sin,
(7) A slave,
(8) An imposter,
(9) One not admitted to *Śrādha*,
(10) A superannuated man,
(11) A woman,
(12) A child,
(13) An oil-maker,
(14) A drunkard,
(15) A lunatic,
(16) A careless man,
(17) One distracted,
(18) A gamester,
(19) One who sacrifices for a whole village,
(20) One engaged in a long journey,
(21) A merchant who travels into foreign countries by crossing the ocean,
(22) A religious ascetic,
(23) A sick man,
(24) One deformed,
(25) One man alone,
(26) A learned *Brāhmaṇa*,
(27) One who neglects religious customs,
(28) An eunuch,
(29) An actor,
(30) An atheist,

1. *Nārada*, I, 177-187, 190-196.

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(31) A *Vrātyas* (one for whom the ceremony of initiation has not been performed),
(32) One who has forsaken his wife or his fire,
(33) One who makes illicit offspring,
(34) A comrade who eats from the same dish,
(35) An adversary,
(36) A spy,
(37) A relation,
(38) One connected by the same womb,
(39) An evil doer,
(40) A public dancer,
(41) One who lives by poison,
(42) A snake catcher,
(43) A poisoner,
(44) An incendiary,
(45) A ploughman,
(46) The son of a *Śūdra* woman,
(47) One who has committed a minor,
(48) One oppressed by fatigue,
(49) A ferocious man,
(50) One who has relinquished worldly appetite,
(51) Penniless person,
(52) A person of lowest caste,
(53) One leading a bad life,
(54) A student whose course of study is not yet completed,
(55) An oil man,
(56) A seller of roots,
(57) One possessed by a demon,
(58) An enemy of the king,
(59) A weather prophet,
(60) An astrologer,
(61) A malicious person,
(62) One self-sold,
(63) One who has a deficient limb,
(64) One who lives by the prostitution of his wife,
(65) One who suffers his mouth to be used like a female part,
(66) One having black nails,
(67) One having black teeth,
(68) The betrayer of his friends,

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and completed in the presence of disinterested and respectable witnesses. The rule was, of course, not inflexible and rigid, all exigencies and urgencies were duly taken into judicious account.

Manu has disqualified the following personnel from becoming witnesses:[1]

(1) The king,
(2) Mechanics and actors,
(3) Srotriya,
(4) Students of the *vedas*,
(5) Ascetic—who has renounced the world,
(6) Wholly dependent personnel,
(7) Men with bad fame,
(8) Robbers,
(9) Personnel following forbidden occupations,
(10) Extremely old men,
(11) Infants,
(12) Single person,
(13) Men of the lowest caste,
(14) Those deficient of organs,
(15) Those deficient of senses,
(16) Any particular sense,
(17) Men extremely grieved,
(18) Intoxicated,
(19) Lunatics,
(20) Persons afflicted with hunger or thirst,
(21) Those oppressed by fatigue,
(22) A sensualist,
(23) Wrathful man,
(24) Thieves.

Medhātithi on *Manu*[2] states that women are disqualified as witnesses only where the plaintiff and defendant are both males but that where there is a litigation between a man and a woman or between women alone, a woman may be a competent witness.

Further *Manu* has disqualified the following personnel also:[3]

(1) Those who have interest in the suit,
(2) Familiar friends,
(3) Companions,
(4) Enemy,
(5) Men formerly convicted of perjury,
(6) Persons suffering from grievous diseases, and
(7) Men tainted with mortal sins.

1. *Manu*, VIII, 65-67.
2. Ibid., 68.
3. Ibid., 64.

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Nārada has given a different type of disqualification.[1] According to him, these disqualifications arise under—

(1) a text of law,
(2) on account of depravity,
(3) on account of contradiction,
(4) on account of voluntary deposition, and
(5) on account of intervening disease.

(1) *A text of law*

Learned *Brāhmaṇas*, devotees, aged persons and ascetics are incapacitated under this text of law. It is very likely that owing to old age, there is loss of memory and as such aged persons cannot be safely relied on, besides this due respect was given to grey hairs. In the case of others, it is desirable from their peculiar position that they should be left alone as far as possible.

(2) *On account of depravity*

Thieves, robbers, dangerous characters, gamblers and assassins are disqualified on account of their depravity. There is no truth to be found in them.

(3) *On account of contradiction*

If witnesses in a case disagree, their mutual contradictions render them all unworthy of belief and thus their testimonies are discarded.

(4) *On account of voluntary deposition*

If a person comes unsummoned and volunteers his deposition he is held unworthy to bear testimony and he is also termed a spy in the law books.

(5) *On account of intervening disease*

If the claimant dies, the witness cited by him becomes incompetent for the reason of intervening death of the claimant. But *Nārada*[2] mentions an exception to this rule

1. *Nārada*, I, 157-162.
2. Ibid., 94.

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He further says that persons addicted to adultery or to drinking, gamblers, calumniators, lunatics, the suffering, violent persons and unbelievers are incompetent witnesses. Before a witness for a party begins to depose, it is the duty of the opposite party to point out the ground or grounds, if any, of the incompetence of the witness put forward for examination. *Kātyāyana* adds that the latent defects of the witnesses of a party must be pointed out by the opposite party, but the patent defects will be considered by the members of the court at the time of giving their decision.[1]

Bṛhaspati laid down that an opponent should not be allowed to point out the grounds of incompetency of witnesses after they have begun to depose and *Kātyāyana* adds that he (the party), who points out, after the witnesses have deposed in a matter, faults in them in whom he found none at first and who cannot set out a proper reason (for his not proclaiming the facts at first) should be fined in the first amercement.[2]

Cases where witnesses are unnecessary

Nārada has laid down the following situations in which witnesses are unnecessary. Somehow, other indications of the crime committed are to be looked at.[3]

(1) A man carrying a firebrand in his hand is incendiary.
(2) One taken with a weapon in his hand is a murderer.
(3) Where a man and the wife of another man seize one another by the hair, the former is held to be an adulteror.
(4) One who goes about with a hatchet in his hand and makes his approach is taken to be a destroyer of bridges.
(5) One carrying an axe in his hand is held to be a destroyer of trees.
(6) One whose looks are suspicious is presumed to have committed an assault.

1. *Kātyāyana*, quoted by *Aparārka*, p. 671
   प्रमाणस्य हि ये दोषा वक्तव्यास्ते विवादिना ।
   गूढ़ास्तु प्रकटा: सभ्यै: काले शास्त्रप्रदर्शनात् ॥
2. *Kātyāyana*, in *Sm. ch.*, p. 83
   लेख्यदोषास्तु ये केचित्साक्षिणां चैव ये स्मृता: ।
   वादकाले तु वक्तव्या: पश्चादुक्तान्न दूषयेत् ॥
3. *Nārada*, I, 172-176.

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Necessary Number of Witnesses

Hindu lawyers saw it unsafe, as a practice, rather than theory, to rely on a single witness and therefore enjoined that a plurality of witnesses was required to meet the ends of justice. No particular number of winesses was generally supposed to be required for the proof of a fact though the *Hindu* lawyers determined the number of witnesses that should be required in each case. It was left to the judges to act in individual cases as per their individual merits.

One Man as a Witness

Viṣṇu and *Bṛhaspati* emphasize that a single witness alone cannot be examined for deciding a matter.[1] But *Yājñavalkya*,[2] *Viṣṇu*,[3] *Nārada*[4] state that one man alone may be a witness in a cause if he is endowed with the regular performance of his religious duties and is accepted as a witness by both sides.

Vyāsa says that even a single person may be enough in a cause, especially in heinous offences called *Sāhasa* if he be one whose actions are pure, who knows the *dharma* and whose truthfulness has been well attested before. *Kauṭilya* says that a single witness (whether a man or a woman) may be enough in cases where the transaction in question was effected in secret (except the king and one performing austerities).[5]

Kātyāyana states that even a single person may be allowed to depose as a witness if he was taken in confidence at the time of making a deposit, so also a messenger sent by a litigant for borrowing an article (such as an ornament) or the manufacturer of an article may alone be sufficient to prove the identity of the article or when a matter has been decided by the king or chief judge, the scribe, the chief justice or any one of the *Sabhyās* may alone prove the plea of resjudication or

1. *Viṣṇu*, VIII, 5; cf. SBE, XXXIII, p. 301, v. 16.
2. *Yājñavalkya*, II, 72.
3. *Viṣṇu*, VIII, 9.
4. *Nārada*, IV, 192.
5. *Kauṭilya*, III, 11

   रहस्यव्यवहारेष्वेका स्त्रीपुरुष उपश्रोता उपद्रष्टा वा साक्षी-
   स्याद्राजता पसवर्जम ।

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the point as to what was said by the plaintiff or the defendant in a suit.[1]

The followings are the main points for a single witness:

(1) A person who is free from covetousness may be accepted as a witness.[2]

(2) Descendants of a noble race who are virtuous and wealthy sacrificers, zealous in the practice of religious austerities, having male issue, well-versed in the holy laws, studious, veracious, versed in the three *vedas* and aged, shall be competent witnesses. One man alone, if he is endowed with the aforesaid qualities, can also be made a witness.[3]

(3) By consent of both parties, a single man may be a witness in a suit but he must be examined in public.[4]

(4) A single witness was considered to furnish acceptable and valid proof:[5]

(a) if he was a messenger,

(b) if he was an accountant,

(c) if he was a person who accidentally witnessed the transaction,

(d) if he was the king or if he was the chief judge.

Plural Witnesses

Bṛhaspati says:[6]

There should be nine, five, four or three witnesses; or

1. *Kātyāyana*, 353-355 quoted by VM, pp. 319-320; *Sm. ch.* II, 76; VP, 112-113, cf. *Bṛhaspati*, quoted by *Aparārka*, p. 667; SBE, XXIII, p. 300, v. 13-14

   अर्थिप्रत्यर्थिनोवक्त्रियं यच्छुतं भूमृता स्वयम् ।
   स एव तत्र साक्षी स्याद्विसंवदि द्वयोरपि ॥
   निर्णिते व्यवहारे तु पुनर्न्यायो यदा भवेत् ।
   अध्यक्षः सभ्यसहितः साक्षी स्यात् तत्र नान्यथा ॥

2. *Manu*, VIII, 77.
3. *Viṣṇu*, VIII, 8-9.
4. *Nārada*, I, 140-192.
5. *Bṛhaspati*, VII, 18.
6. Ibid., VII, 16

   नव सप्त पञ्च वा स्युश्चत्वारस्तय एव वा ।
   उभौ वा श्रोत्रियौ ख्यातौ नैकं पृच्छेत्कदाचन ॥

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two only if they are learned *Brāhmaṇas*. A single shall never be examined.

Subscribing and secret witnesses should be at least two of each sort. And spontaneous, reminded, family witnesses and indirect witnesses should be three, four or five of each sort.[1] *Gautama*,[2] *Manu*,[3] *Yājñavalkya*,[4] *Nārada*,[5] and others require that ordinarily there should be at least three witnesses in a cause who take delight in acts ordained in the *Vedas* and in sacred law-books; and properly they should be of the same sects and class with the party for whom they give witness. But if that cannot be those of all classes may be examined.

If the debtor being questioned denies the debt, the creditor anxious to realise his claim must prove or substantiate it by at least three witnesses examined in the presence of the king and of a *Brāhmaṇa*.

Kātyāyana prescribes that when it is impossible to bring witnesses because they reside in a foreign land, evidence taken in writing before a man learned in the three *vedas* and sent by him should be read in deciding the cause.[6]

Smṛtichandrikā applies the word *pañcārudha* (on which five are recorded) to documents that are signed by the creditor, the debtor, two witnesses and the scribe.[7] The *Sarasvatīvilāsa* holds that *pañcārūdhata* consists in having the creditor, debtor, witness (as one item), scribe and the matter to be written.[8] *Hārita* and *Vyāsa*[9] employ the dual while *Yājñavalkya* employs

1. Ibid., VII, 17.
2. *Gautama*, XIII, 2.
3. *Manu*, VIII, 60.
4. *Yājñavalkya*, II, 69

   यवरा: साक्षिणो ज्ञेया: श्रौतस्मार्तक्रियापरा: ।
   यथाजाति यथावर्णं सर्वे सर्वेषु वा स्मृता: ।।

5. *Nārada*, IV, 153.
6. *Kātyāyana* quoted by *Aparārka*, p. 667

   अशक्य आगमो यत्र विदेशं प्रतिवादिनाम् ।
   त्रविध प्रहितं लेख्य साक्ष्यं तत्र प्रवादयेत् ।।

7. *Sm. ch.*, II, 59.
8. *Sarasvatīvilāsa*, p. 114.
9. Quoted in *Sm. ch.*, II, 59.

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the plural.[1] Therefore, ordinarily two witnesses sufficed but in very important writings there should be more witnesses. *Viśvarūpa* reads *asamāh* in *Yājñavalkya* II, 87 and requires three witnesses as the minimum.

Behaviour of Witnesses

Veracity of a witness is known to a great extent by careful observation of his demeanour. In case of a false witness, several peculiarities are visible which at once betray his trustworthiness.

The internal disposition of witnesses may well be perceived by external signs such as their voice, their colour, their motions, their aspect, their eyes and their gestures.[2] The internal state of the mind is perceived through the aspect, the motions, the gate, the gestures, the speech and the changes in the eye and the face.[3]

Yājñavalkya says that a false complainant is detected by the following symptoms:[4]

> He grows restless, licks his lips with his tongue, perspires on his forehead, his face gets pale, his voice fails and is chocked, he makes contradictory statements and talks at random, cannot speak in a pleasant tone, cannot cast an

1. *Yājñavalkya*, II, 87
   साक्षिणश्च स्वहस्तेन पितृनामकपूर्वकम् ।
   अत्राहममुकः साक्षी लिखेयुरिति ते समाः ॥
2. *Manu*, VIII, 25
   वाह्यैर्विभावयेल्लिगैर्भावमन्तर्गतं नृणाम् ।
   स्वरवर्णो ताकारैश्चक्षुषा चेष्टितेन च ॥
3. Ibid., VIII, 26
   आकारैरिङ्गितैर्गत्या चेष्टया भाषितेन च ।
   नेत्रवक्त्रविकारैश्च गृह्यतेन्तर्गतं मनः ॥
4. *Yājñavalkya*, II, 13-15
   देशाद् देशान्तरं याति सूक्किणी परिलेढि च ।
   ललाटं स्विद्यते चास्य मुखं वैवर्ण्यमेति च ॥
   परिशुष्यत्स्खलद्वाक्यो विरुद्धं बहु भाषते ।
   वाक्चक्षुः पूजयति नो तथौष्टौ निर्भुजत्यपि ॥
   स्वभावाद्विकृतिं गच्छेन्मनोवाक्कायकर्मभिः ।
   अभियोगे थ साक्ष्ये वा दुष्टः स परिकीर्तितः ॥

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agreeable look and twists his lips and thus assumes without any cause a distorted and unnatural appearance.

Nārada[1] and *Viṣṇu*[2] also point out the actions and appearance of a party or witness that deposes falsely viz.

> Oppressed by the consciousness of his guilt he looks as if he was ill, constantly shifts his position and runs after everybody. He walks irresolutely and without any reason, draws repeated sighs, scratches the ground with his feet and shakes his arms and clothes. His countenance changes colour, his forehead sweats, his lips become dry and he looks above and about himself. He makes long irrelevant speeches as if he were in a hurry and without being asked.

Viṣṇu says that a false witness may be known by his altered looks, by his countenance changing colour and by his random talks.[3]

Such a witness may be looked upon as untrue and the king or judge should bring him under discipline (so that he will be afraid to lie). Merely on seeing these signs a witness was not to be punished or entirely disbelieved, since these signs raise only a probability of untruthfulness.

Oath Administered to Witnesses

Manu says that when there are no witnesses the truth would have to be found out by *Śapatha*.[4] He further says:[5]

> The great *Ṛṣis* (the seven sages) and gods took oath for the purpose of deciding matters and even *Vaśiṣtha* swore an oath before king (Sudāsa) the son of *Pijavana* (where the sage was charged by *Viśvāmitra* of the offence of devouring his one hundred sons).

The above statement of *Manu* has been supported also by *Nārada*.[6] He refers to the special oaths taken for clearing themselves by *Vaśiṣtha*, when he was suspected to be *Yatu-*

1. *Nārada*, II, 193-196.
2. *Viṣṇu*, VII, 18.
3. Ibid.
4. *Manu*, VIII, 109.
5. Ibid., 110.
6. *Nārada*, I, 243-244.

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dhana (a demon or sorcerer) and by the seven sages together with Indra, who (sages) were suspected to have stolen lotus fibres (by each among them).[1] He provides further that whenever circumstantial evidence and presumptions therefor do not enable the court to arrive at a decision, the judge should press the litigant with *Śapatha*, according to the place, time and strength of the litigant, such as fire, water, his spiritual merit and others.[2]

Different modes of administering oaths to the witnesses for speaking the truth are laid down:

(a) A *Brāhmaṇa* witness is to swear by his veracity.

(b) A *Kshatriya* by a chariot or the animal, he rides on. He could also swear by his weapons.

(c) A *Vaiśya* by his kine, grain and gold, and

(d) A *Śūdra* under pain of all sorts of grievous sins.

Besides the above, witnesses could also be directed to carry fire or dive under water or severally to touch the heads of his wife and children.[3] In case of non-*Brāhmaṇas* oath was to be given in the presence of either the gods or the king or *Brāhmaṇas*.[4]

Manu[5] and *Viṣṇu*[6] give the treatment of the witnesses by the judge—"to a *Brāhmaṇa* witness '*bruhi*' (speak); to *Kshatriya* '*Satyam bruhi*'—speak the truth; to a *Vaiśya* warning him that his kine, grain and gold shall suffer for falsehood; and to *Śūdra* that he shall incur all the great sins (*mahāpātaka*) if he resorts to false evidence". Besides both *Vaśiṣtha* and *Viṣṇu* lay down that to witnesses of all castes should be pointed out the horrors, to which a perjurer is subjected in the other world, and the reward enjoyed by those who act righteously.

1. *Nārada*, IV, 243-244.
2. *Nārada*, IV, 289.
3. *Manu*, VIII, 113-114

   सत्येन शापयेद्विप्रं क्षत्रियं वाहनायुधैः ।
   गोबीजका नैर्वैश्यं शद्रं सर्वैस्तु पातकैः ॥
   अग्नि वाहारयेदेनमप्सु चैनं निम येत् ।
   पुत्रदारस्य वाप्येनं शिरांसि स्पर्शयेत्पृथक् ॥

4. *Gautama*, XIII, 13.
5. *Manu*, VIII, 88; V, 113.
6. *Viṣṇu*, VIII, 20-23.

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Śapatha and Ordeal

Some writers make a distinction between *Śapatha* (special oaths) and ordeals (*divyas*), others (like *Manu* and *Nārada*) do not[1] viz. the *Vivādachandra* quotes *Nārada* (IV, 247)—'when there is no witness in dispute between litigant, there the judges should decide by means of ordeals and various *Śapatha*'.[2]

According to the *Mitāksharā* (on *Yājñavalkya*, II, 96) and *Sarasvatīvilāsa* (p. 106) both special oaths and ordeals are divine proof (*divya pramāṇa*) but in disputes of small value *Śapathas* (oaths) were generally employed, while ordeals were resorted to only in serious disputes or crimes.

The *Mitāksharā* (on *Yājñavalkya*, II, 96), the *Vyavahāra Mayūkha* (p. 46) and *Vyavahāra Prakāśa* (p. 170) say that ordeals are those that generally end in immediate decision of the dispute, while '*Śapatha*' take time for decision (because after the oath the king has to wait for a week or more to see whether a calamity befalls the person taking the special oath).

Vyāsa employs the word '*Śapatha*' for both special oaths (taken as to one's *Satya*) and ordeals like balance. *Śaṅkha-likhita* states that divine proofs are the balance, eating poison, entering fire, holding a piece of hot iron, offering one's merit acquired by sacrifices and charity and the king should make him undergo other *Śapatha*.[3]

1. *Manu*, VIII, 109-112; *Nārada*, IV, 239

असाक्षिकेषु त्यर्थेषु मिथो विवदमानयोः ।
अविन्दंस्तत्वः सत्यं शपथेनापि लम्भयेत् ॥
महर्षिभिश्च देवैश्च कार्यार्थं शपथाः कृताः ।
वसिष्ठश्चापि शपथं शेपे पैजवने नृपे ॥
न वृथा शपथं शुर्यास्वल्पेऽप्यर्थे नरो बुधः ।
वृथा हि शपथं कुर्वन्प्रेत्य चैह च नश्यति ॥
कामिनीषु विवाहेषु गवां भक्ष्ये तथेन्धने ।
ब्राह्मणाभ्युपपत्तौ च शपथे नास्ति पातकम् ॥

2. *Vivādachandra*, p. 112; *Sarasvatīvilāsa*, p. 106

यदा साक्षी न विधेत विवादे वदतां नृणाम् ।
तदा दिव्यैः परीक्षेत शपथैश्च नृपविधैः ॥

3. *Śaṅkhalikhita* quoted in *Parāśara Mādhavīya*, III, p. 151

तत्र दिव्यं नाम तुलाधारणं विषाशनमग्नि प्रवेशो लोहधारण मिष्टापूर्तं प्रदानमन्यांश्चशपथान कारयेत् ।

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Bṛhaspati says that where documents or witnesses do not lead to a certain decision or where inference from circumstantial evidence also is confusing, there the matter is to be decided by divine proof.[1] He enumerates the special oaths mentioned by *Manu* and *Nārada* adds that they are to be employed in small matters (civil and criminal).[2]

Nārada prescribes that in charges of grave offenders ordeals may be resorted to and *Śapathas* in matter of small moment.[3] He also mentions—'truth and arms, kine, grains and gold the feet of (the images of) gods and the ancestors, acts of charity and good deeds (*Śukṛta*) are to be employed in *Śapatha* as declared by *Manu*.'[4]

Yājñavalkya[5] states that witnesses should be made to depose in the presence of the parties and *Gautama*[6] and *Kātyāyana*[7] prescribe that witnesses should face the east or north and are to be examined in the presence of the images of gods and *Brāhmaṇas* in the first half of the day and should be exhorted to tell the truth by being bound with oaths. This examination in the public and after an oath went a long way in checking the tendency to depose falsely.

The oath consisted of two parts:

(1) The requirement to tell the truth, and

(2) The exhortatory and imprecatory part.

1. *Bṛhaspati*, quoted by *Vyavahāra Mayūkha*, p. 333; *Aparārka*, p. 629
   लिखिते साक्षिवादे च सन्दिग्धिर्यत्र जायते ।
   अनुमाने च सम्भ्रान्ते तत्र दिव्यं विशोधनम् ॥
2. *Bṛhaspati*, in *Sm. ch.*, II, p. 96; cf. *Parāśara Mādhavīya*, III, p. 151
   सत्यवादन शस्त्राणि गोबीजकनकानि च । देवब्राह्मणादाश्च पुत्ररशिरांसि च ।
   एते तु शपथा: प्रोक्ता स्वल्पेर्थे सुकरा सदा: ।
3. *Nārada*, IV, 249.
4. Ibid., IV, 248.
5. *Yājñavalkya*, II, 73
   साक्षिण: श्रावयेद्वादिप्रतिवादिसमीपगान् ।
   ये पातककृतां लोका महापातकिनां तथा ॥
6. *Gautama*, XIII, 13.
7. *Kātyāyana*, 344-345
   देवब्राह्मणसांनिध्ये साक्ष्यं पृच्छेदृतं द्विजान ।
   उदङ्मुखांप्राङ्मुखात्वा पूर्वाह्ण वै: शुचि: शुचीन ।
   आहयें साक्षिण: पच्छेन्नियम्य शपथैर्भृषम् ।
   समैस्तान विदिता चारान विज्ञातार्थान् पृथक्पृथक् ॥

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Both were administered by the presiding judge. *Gautama*[1] appears to prescribe that an oath was not to be administered to *Brāhmaṇa* witness but *Manu*[2] does not make this distinction. *Manu*[3] is careful to point out that the exhortation is not to depend purely on the caste but that *Brāhmaṇas* and others who tend kine, who engage in trade, are craftsmen or actors, who are menial, servants and usurers should be treated by the judge as *Śūdras* in the matter of taking oaths.

After the administration of such oaths to witnesses, the judge exhorted them to speak the truth. He used to impress upon the witnesses, the rewards of truth and evils of falsehood. After explaining the merits and quality of truthfulness and disadvantages and evils of falsehood, he started the examination with the following explanations:[4]

> What you know to be mutually transacted in this matter between the two men before us, declare that in accordance with the truth, for you are witness in this cause.

Manu gives the admonition that wise man should not make a false oath, because so doing he incurs loss of reputation here and after death by falling into hell.[5] *Yājñavalkya* prescribes a fine of 100 *paṇas* for one who takes an improper or profane oath.[6]

Examination of the Witnesses

From the following references it is evident that witnesses were generally examined in the morning:

> Let the judge summon the witnesses at the time of sunrise, and examine them after having bound them by an oath.[7]

Manu says:[8]

1. *Gautama*, XIII, 12-13.
2. *Manu*, VIII, 113; cf. *Nārada*, IV, 199.
3. *Manu*, VIII, 102; cf. *Baudhāyana*, I, 5, 95.
4. *Manu*, VIII, 80.
5. Ibid., VIII, 11.
6. *Yājñavalkya*, II, 236
   यश्चामुक्त मातरं गमित्यामीत्येवं शपथं करोति ।
7. *Viṣṇu*, VIII, 19.
8. *Manu*, VIII, 87
   देवब्राह्मणसांनिध्यै साक्ष्यं पृच्छेदृतं द्विजान् ।
   ऊदगु खानप्रा नुखान्वा पूर्वाह्ये वै शुचिः शुचीन् ।।

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> The judge being purified, shall ask in the forenoon the twice-born witnesses likewise purified and standing facing the north or the east, to give true evidence in the presence of the gods and the *Brāhmaṇas*.

Āpastaṁba says:[1]

> A person who is possessed of good qualities shall, as a witness, answer truthfully all questions put to him on an auspicious day in the morning before a kindled fire, standing near a jar full of water in the presence of the king and with the consent of all, after having been exhorted to be fair to both sides.

Bṛhaspati had prescribed that the witness should appear in the court with due respect to the judge and in a religious frame of mind. After putting off his shoes and his turban, he was to stretch out his right hand and declare the truth after taking in his hands, gold, cowdung or blades of sacred grass (*darbhā*).[2]

There is a little bit of confusion and contradiction about the order of examination of witnesses. *Viṣṇu* says:[3]

> Let the king examine the witnesses in the order of their castes.

But this order is not specially mentioned in any other law books. *Manu*, *Nārada*, *Gautama*, *Vaśiṣtha*, *Bṛhaspati*, *Baudhāyana*, *Āpastaṁba*, *Yājñavalkya* etc. are silent on this point. Although what *Viṣṇu* says seems to be not what would invariably happen but what would practically arise out of the relative respectable position of the witnesses as we are aware of the following traditions which are, for one reason or the other, followed even today:

(1) In general feasts invitees are fed in the order of their caste. The *Brāhmaṇas* are fed first followed by kinsmen, relatives and men of own family then comes the turn of other invitees of more or less the same strata of the host and in the end, the servants and *Śūdras* are fed.

(2) In British Courts, a particular witness is, very often than not, examined first.

1. *Āpastaṁba*, II, II, 29.
2. *Bṛhaspati*, VIII, 23.
3. *Viṣṇu*, VIII, 37.

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(3) Priorities are given, even today to witnesses, who are government servants for the reason that frequent attendants in courts for examination and subsequent delays may cause inconvenience to public service.

(4) Priority of hearing is given even today to soldiers employed on active duties as per soldier's litigation act.

(5) In case of imminent death, witnesses are deposed with due priority given to them.

(6) The courts on application have full powers to examine a witness with given priorities.

(7) As we have seen from the texts of oaths administered by different classes of the society in which a *Brāhmaṇa* is not supposed to take oath and that whatever he said was more or less considered to be correct, it is just possible that the deposition by a *Brāhmaṇa* in the first instance could be the final deciding factor in deciding a case, thereby facilitating avoidance of other witnesses altogether priorities to *Brāhmaṇa* witnesses were given.

Under the circumstances set forth above, it was not unlikely that the king could first dismiss a *Brāhmaṇa* out of respect to his social position. Besides the above, the preference alluded to by *Viṣṇu* was also discernible in the actual trials of suitors, which were held according to the order of the castes.[1]

Witnesses after they were assembled before the court are to be ordinarily examined separately[2] in the open court in the presence of the parties and never behind their back. But *Gautama*[3] and *Kātyāyana*[4] provide that if a cerain matter is seen by the witnesses as a body then they may be examined together. *Bṛhaspati* and *Manu*[5] say that the truth of the statements of

1. *Manu*, VIII, 24
   अर्थानर्थौबुभौ बुद्धा धर्माधर्मौ च केवलौ ।
   वर्णक्रमेण सर्वाणि पश्येत्कार्याणि कार्यिणाम् ।
2. *Kātyāyana*, 344-345.
3. *Gautama*, XIII, 5.
4. *Kātyāyana*, 394.
5. *Manu*, VIII, 25
   बाह्यैर्विज्ञावयेल्लिङ्गैर्भावमन्तर्गतं नृणाम् ।
   स्वरवर्णेङ्गिताकारैश्चक्षुषा चेष्टितेन च ॥

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witnesses should be examined by marking their tone, their change of colour, their eyes, their gestures and their demeanour.

Most *Smṛtis*[1] expressly point out that strict examination of the character of witnesses should be entered upon in disputes about debts and the like which are of a fixed nature (of a civil nature), but that in complaints about all kinds of *Sāhasa* (heinous crime) in robbery, adultery or the two kinds of *pāruṣya* (viz. defamation and assault) there should be no strict inquiry into the character of witnesses (that is, all can be witnesses in such cases) and that even those like slaves and fault-finders who have been enumerated among incompetent witnesses can become witnesses in grave matters.[2]

The idea is that in such cases the witnesses need not be strictly examined as to their possessing the good qualities ordinarily required in witnesses. But this does not authorise the examination of such persons as lunatics or idiots as witnesses, because they have not the power to understand things.

cf. *Bṛhaspati* quoted by *Sm. ch.*, II, p. 85

उपस्थिताः परिक्ष्याः स्युः स्वरवर्णेङ्गितादिभिः ।

1. *Gautama*, XIII, 9; cf. *Kauṭilya*, III, 11; *Manu*, VIII, 72; *Yājñavalkya*. II, 72; *Nārada*, IV, 188-189; *Viṣṇu*, III, 6; *Kātyāyana*, 365-366.
2. *Kātyāyana*, quoted in *Aparārka*, pp. 670-671

ऋणादिषु परीक्षेत साक्षिणः स्थिरकर्मसु ।
साहसात्ययिके चैव परीक्षा कुत्रचित्स्मृता ।।
व्याधातेषु नृपाज्ञायाः संग्रहे साहसेषु च ।
स्तेयपारुष्ययोश्चैव न परीक्षेत साक्षिणः ।।
अन्तर्वेश्मनि रात्रौ च बहिर्ग्रामाच्च यद्भवेत ।
एतेष्वेवाभियोगश्चेन्त परीक्षेत साक्षिणः ।।

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CHAPTER FOUR

Trial

Before the third part of the procedure, the trial, can begin the judge has to decide on which party the burden of adducing proofs shall fall. In general, in the case of denial the plaintiff and in the case of protest or reference to a previous verdict, the accused has to begin the act of proving (*Kriyā*), in the case of confusion generally no trial takes place. In doubtful cases an amicable settlement is recommended to the parties which may also be ordered by a royal mandate but it will have to be performed at the proper time if the payment of a fine, amounting to double this disputant sum, has to be avoided.[1]

In the *Mṛchchakatika*, the plaintiff is ordered by the judge to present his plaint which the court scribe records on the floor (likewise in the *Dhūrtasamāgama*); *Chārudatta*, accused of murder, is courteously summoned to the court, and in the procedure it is attempted to extort from him an admission of guilt even under the threat of flogging.

The purpose of a trial is frequently described as 'desire to ascertain the truth'. Hindu procedure took every possible precaution, consistently with the conditions or knowledge of the time, to secure the discovery of the truth.

Trial by Oaths

Oath is an attestation or affirmation of the truth of a statement as renders liable to punishment for perjury one who wilfully asserts what is not true. It is a solemn attestation in support of a declaration, promise or vow by means of an appeal to some personages or object regarded by the person swearing as high and holy.

1. *Bṛhaspati*, V, 10-13.

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It is a universal practice and originates in the primitive stage of society and survives throughout in some form or the other. This universal practice has found its fullest expression in the *Smṛtis*. Oath is closely related to ordeals. "Both belong actually to the same aspect of human psychology under which an individual agrees to face a serious peril if some thing wrong had been done or is to be done by him. Conditional self-imprecation is the basic element in both, oath as well as ordeals."[1] Their distinction as well as their common feature is well brought out by Westermarck, when he writes, "To say 'May I die if I have done this or that' is an oath. To say 'May this drink kill me if I have done this or that' and then to drink the fluid in question, is an ordeal."[2]

Crawley considers oath to be the primary constituent of ordeal. "The majority of ordeals", says he, "are really concrete oaths taken by the accused party, and the self-imprecation is realised immediately."[3]

As already discussed the *Śapatha* is used to mean oath. It came to be a rule in the *Smṛtis* that oath is to be resorted to in trifling matters and light cases, whereas ordeal is to be employed in heavy crimes.[4] Scholars distinguish several stages in the development of oath.[5] In the earliest form, the efficiency of oath depends on the primitive belief in magic power of cursing words contained in the oath. Then we find the next stage in which the belief in magic decays and the words of oath now require to be charged with supernatural power by touching or holding some thing while pronouncing them. Now the oath acts neither by the magic of the words themselves nor by touching some thing but by an appeal or prayer to a God. It must

1. Singh, Shivaji, *Evolution of Smṛti Law*, Vārāṇasī, 1972, p. 103.
2. Westermarck, E., *Early Beliefs and their Social Influence*, London, 1932, p. 84.
3. Crawley, A.E., 'Oath—introduction and primitive' in ERE, vol. IX, p. 433.
4. *Bṛhaspati*, VIII, 34

   एते च शपथाः प्रोक्ताः अल्पार्थे सुकरा सदाः।
   साहसेष्वभिशायेषु दिव्यात्याहुर्विशोधनम् ॥

   cf. *Nārada*, I, 249-250; *Viṣṇu*, IX, 2-9.
5. Westermarck, E., op. cit., pp. 79-82; Crawley, A.E., op. cit., pp. 430-31.

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not, however, be forgotten that the elements of the earliest forms of oath survive in the later forms and it is in this fact we can recognise the play of atavism. After having crossed the three stages in the development of oath, the human sense still has residue of the earliest primitive form of oath. It is not uncommon to find persons, even in the most advanced societies, who would not praise their health or their children's beauty simply fearing that the words may have a bad influence.

The earliest of oath is expressed in the *Smṛtis* regarding bad results of falsehood as also about the power of words. Before giving their oral evidence, the witnesses were exhorted by stating at length the sinfulness of falsehood 'to inspire them with deep awe' as *Nārada* says.[1] For example—'He who gives false testimony, as a witness, will enter his enemy's house naked with his head shorn, tormented with hunger and thirst and deprived of sight to beg food with an earthen pot. Naked with his head shorn, with a begging bowl standing hungry before the doots of his adversary, shall he constantly meet his enemies who gives false testimony.'[2] It is therefore such a consequence conceived of speaking false after swearing. Not only that, it is also believed that a false witness is doomed to spend nights 'in the same way as a superseded wife, or as a man who has been worsted at a game of dice, or as one whose body is crushed down under a heavy load'.[3]

An important milestone in the evolution of the law of oath is seen in the *Smṛtis*. Manu has prescribed that the judge should cause the accused to touch the head of his wife and children.[4] He gives also the list of objects by which the members of the different *Varṇas* must swear. He opines that a *Brāhmaṇa* must swear by his veracity, a *Kshatriya* by his chariot or the animal he rides on and by his weapons, a *Vaiśya*, by his kine, grain and gold, and a *Śūdra*, by all grievous sins.[5]

The custom of oath developed and while swearing one must be in contact with some holy object. Nārada enjoins that a

1. *Nārada*, I, 200.
2. Ibid., 201-202.
3. Ibid., 203.
4. *Manu*, VIII, 114.
5. Ibid., 113.

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witness who wavers in giving evidence, that is who gives false evidence is sure to be fettered with a thousand bonds by the chain of *Varuṇa*.[1] We find in the *Smṛtis* several verses according to which a swearer must touch a holy object while swearing. Thus, according to *Viṣṇu*, one has to swear by *durvā* grass, tila, silver, gold, and a lump of soil taken from a furrow, in accordance with the amount involved in the dispute and also with respect to his *Varṇa*.[2] *Bṛhaspati* prescribes to swear by venerable Gods or *Brāhmaṇas*.[3] The general procedure of giving oral evidence, according to him, was to put off shoes, turban, stretch out the right hand and then speak, having gold, cowdung or grass in hands.[4]

Ordinarily a decision was taken on the strength of evidences both oral and documentary that the party may choose to adduce in support of their respective case. Sometimes it so happens that no evidence is forthcoming and it becomes extremely difficult for the judge to ascertain the truth. In such cases religious aid was sought for. The result was that there were two special modes of trial namely—

(1) Trial by oaths, and
(2) Trial by ordeals.

About the justification of the necessity and traditionally accepted means for arriving at a conclusion for justice by oath *Manu* and *Nārada* have quoted the following references of the remote past. *Manu* says, "If two disputants quarrel about matters for which no witnesses are available and the real truth cannot be ascertained, the judge may discover it by oath."[5] He further says: "Even the great sages and the God have taken oath in regard to doubtful matters."[6]

We have seen that *Vaśiṣtha* also swore an oath for vindicating himself when he was accused of having assumed the

1. *Nārada*, I, 204.
2. *Viṣṇu*, IX, 5-9.
3. *Bṛhaspati*, VIII, 33.
4. Ibid., IV, 42
   विहायोपान दुष्णीषं दक्षिणं पाणिमुद्धरेत ।
   हिरण्यंगोशकृद्धभीन समायाय ऋतं वदेत ॥
5. *Manu*, VIII, 109.
6. Ibid., 100.

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shape of an evil spirit. This view has been supported by *Nārada*[1] also who affirms that seven *Ṛṣis* and *Indra* took an oath in order to clear themselves mutually of suspicion when each was suspected of having taken lotus fibres.

It was a religious belief and instinct of the people that prevailed against all selfishness and truth came out in a trial by oath. Great was the sanctity attached to oaths. *Manu* enjoins:[2]

> Let no wise man swear an oath falsely, even in a trifling matter for he who swears an oath falsely is lost in this world as well as in the next.

Nature of Oaths

Bṛhaspati says that oaths have been ordained by truth, a vehicle, weapons, cows, seeds, gold, gods, venerable *Brāhmaṇa*, heads of sons or wives. The manner of swearing oaths by the parties was nearly similar to that followed by the witnesses.[3]

In the matter of boundary disputes *Manu* directs that the parties swore oaths by putting earth on their heads, and wearing chaplets and red-dresses.[4]

Cases in which oaths were administered

Bṛhaspati has already prescribed oaths in cases of trifling nature.[5] *Nārada* opines:[6] "Where a heavy crime is committed, one of the ordeals is to be administered. In light cases, a virtuous king shall swear a man with his various oaths."

Viṣṇu has given the following hypothesis in cases of a denial of a deposit or of theft or robbery. In each of these cases, according to him, oaths are to be administered if the value of the property claimed is very small. In other cases ordeal is suggested. About the types of oaths, he has given the following five depending on the value of the property in dispute. A *Śūdra* must swear by the following elements:[7]

1. *Nārada*, I, 243.
2. *Manu*.
3. *Bṛhaspati*, X, 6.
4. *Manu*, VIII, 256.
5. *Bṛhaspati*, X, 7.
6. *Nārada*, I, 249.
7. *Viṣṇu*, IX, 3-9.

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(1)	Value of property less than one Kṛṣṇala						by a blade of Durbā grass
(2)	,,	,,	,,	,,	two	,,	by a blade of *tila*
(3)	,,	,,	,,	,,	three	,,	by a blade of silver
(4)	,,	,,	,,	,,	four	,,	by a blade of gold
(5)	,,	,,	,,	,,	five	,,	by a blade of lump of earth taken from a furrow.

Trial by Ordeals

Among the means of proof, ordeal (*divya* or *samayakriyā*) appears to have been very well recognised by the *Dharmaśāstras*. The use of ordeal could be resorted to, it was thus prescribed in the Smṛtis, only when no human means of proof were available.[1] It is defined as 'that which decides a matter (in dispute) not determined by human means of proof' or 'that which decides what cannot be or is not to be decided by human means of proof'.[2] If one party relied on human and the other on divine means of proof, it was incumbent upon the king or judge to accept the point of the party producing human means of proof.[3]

Āpastamba refers to it as a means of proof while *Viṣṇu* dwells at length on it. *Viṣṇu* also lays down the general rule

1. *Nārada*, II, 29; IV, 239; cf. *Yājñavalkya*, II, 22
   सम्भवे साक्षिणं प्राज्ञो दैविकी वर्जयेत् क्रियाम् ।
2. *Divyatattva*, p. 574
   तत्रमानुषप्रमाणानिर्णेयस्यापि निर्णायकं यत्तद्दिव्यमिति लोकप्रसिद्धम् ।
   अपिनामानुष प्रमाणसत्त्वेपि यत्र चैवधटाधङ्गीकारस्तत्राप्येतद्भवतीति सूचितम् ।
   cf. *Bṛhaspati* in *Vyavahāraprakāśa*, p. 169
   सम्भवे साक्षिणां प्राज्ञो दैविकी वर्जयेत् क्रियाम् ।
   cf. *Kātyāyana* in *Sm. ch.*, II, 51
   यस्मिन् यस्मिन् विवादे तु साक्षिणां नास्ति सम्भवः ।
   साहसेषु विशेषेण तत्र दिव्यानि दापयेत् ।
   cf. *Yājñavalkya*, II, 22; *Nārada*, II, 29; IV, 239.
3. *Kātyāyana*, 218
   यधेको मानुषीं ब्रूणादन्योः ब्रूयात्तु दैविकीम् ।
   मानुषीं तत्र गृहणीयान्न तु दैवीं क्रियां नृपः ॥

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that the different kinds of ordeal may be administered indiscriminately in the cases of criminal action directed against the king or of offences technically known as *Sāhasa*.[1] In the case of denial of deposit, or alleged theft or robbery, ordeal is to be resorted to, the suitability of the particular kind of ordeal being determined according to the value of the subject of dispute. In simpler cases only the oath is to be taken but in serious and important cases the ordeal is ordained and the value of the stolen, embezzled or otherwise disputed property is estimated in gold in order to decide whether an oath or an ordeal is to be applied and in the latter case also to decide which one.

Limitations were imposed on the use of ordeals not only with respect to the nature of the dispute under question but also with respect to the accused concerned. Generally, persons observing vows, those performing austerities, distressed persons, women, minors and aged could not be subject to ordeals.[2] It were to be given after due consideration of the *Varṇa* of the accused.[3]

Kātyāyana holds that persons of the higher castes who are cowherds, traders, artisans, domestic servants and usurers should be given ordeals as if they were *Śūdras*.[4] He allows all ordeals to members of all castes except that *Brāhmaṇas* are not to undergo the poison ordeal.[5] He further provides that no ordeal should be allowed to be performed personally by the following pesrons, viz.[6]

1. *Nārada*, II, 30
   अरण्ये निर्जने रात्रावन्तर्वेश्मनि साहसे ।
   न्यासस्थापह्नवे चैव दिव्या संभवति क्रिया ॥
   cf. *Bṛhaspati*, IV, 13; *Kātyāyana*, 239; *Viṣṇu*, VI, 34; *Parâśara Smṛti*, quoted by *Aparārka* on *Yājñavalkya*, II, 24.
2. PS quoted by *Aparārka* on *Yājñavalkya*, II, 98; cf. *Nārada*, IV, 256
   ब्राह्मणानां कृशाङ्गानां बालवृद्धतपास्विनाम् ।
   स्त्रीणां च न भवेद्दिव्यं यदि धर्मस्त्ववेक्ष्यते ॥
3. *Nārada*, IV, 335; cf. *Yājñavalkya*, II, 98
   ब्राह्मणस्य घटोदेयः क्षत्रियस्य हुताशनः ।
   वैशस्य सलिलं प्रोक्तं विषं शूद्रस्य दापयेत् ॥
4. *Kātyāyana*, quoted by *Aparārka*, p. 698; *Sarasvatīvilāsa*, p. 180
   गोरक्षकात्वाणिजं कांस्तथा कारुकुशीलवान् ।
   प्रेष्यान्ताभुंयिकोश्चैव ग्राह्येच्छूद्रवद् द्विजान् ॥
5. *Kātyāyana*, 422.
6. Ibid., 427-430.

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(1) Those charged with the murder of their father, mother, a *Brāhmaṇa*, their teacher, a minor, a woman and the king.

(2) Those guilty of the five grave sins; particularly those that are atheist.

(3) Those who wear (or subsist by) peculiar sect marks; great rogues.

(4) Those who are experts in incantations and *yoga* practices.

(5) Those who are the progeny of unions of persons of different *varṇas*.

(6) Those who repeatedly engage in sin.

In the case of these the king should offer ordeals to good men appointed by them on their behalf and if such good men are not willing then they should appoint their own relatives. He lays down the following rather remarkable provision, viz. when untouchables, men of lowest castes, slaves, *mlechchas* and those born of mixed unions in the reverse order of the castes are guilty of crimes, the determination of their guilt should not be made by the king, he should indicate such ordeals as are in vogue among them.[1]

Bṛhaspati and *Pitāmah* say that in disputes about immovable property, divine proof should be avoided, which does not forbid *divya* altogether, but only where the evidence of neighbours or of a document is available and that in the latter case even if the defendant offers to pay a fine if he fails by the divine proof, *divya* is not to be resorted to.[2] The ordinary rule was that ordeals were to be administered to the defendant.[3] But

1. *Kātyāyana*, quoted by *Mitāksharā* on *Yājñavalkya*, II, 99
   अस्पृश्याधमदासानां म्लेच्छानां पापकारिणाम् ।
   प्रातिलोम्य प्रसूतानां निश्चयो न तु राजनि ।
   तत्प्रसिद्धानि दिव्यानि संशयेतेषु निर्दिशेत् ॥
2. *Bṛhaspati*, quoted by *Aparārka*, p. 629; *Sm. ch.*, II, 53; *Pitāmah* in *Mitāksharā* on *Yājñavalkya*, II, 22
   स्थावरेषु निवादेषु दिव्यानि परिवर्जयेत् ।
3. *Kātyāyana*, quoted by *Aparārka*, p. 695
   न काश्चिदभियोक्तारं दिव्येषु विनियोजयेत् ।
   अभियुक्ताय दातव्यं दिव्यं दिव्य विशारदैः ॥

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Yājñavalkya[1] gives an option that any one of the two litigants may by mutual agreement undergo an ordeal and the other should agree to pay on defeat a fine or undergo physical punishment. This means that human proof is adduced to prove a positive proposition, that divine proof may be resorted to prove a negative proposition as well (e.g. a defendant denying the claim for a debt may prove by *divya* that he did not borrow a loan).

Medhātithi on *Manu*[2] discusses the question how ordeals can be relied upon for the discovery of truth. The objection is raised that fire and water are natural forces that act in a uniform way and are not intelligent beings which may change their minds by an appeal to them. Therefore, the objector says, ordeals and oaths are like magic and are only meant that thieves may (by some trick) not be burnt in the fire ordeal and good men are seen to suffer burns. The reply is: the usefulness of ordeals cannot be negatived by these examples of failures, as they are not frequent and as even direct perception and inference sometimes lead to uncertain results. No one, however, says that these latter should not be relied upon just as one relies on witnesses in deciding a matter so reliance can be placed on ordeals. Where there is failure in case of ordeals, it must be held to be due to the results of the performers' actions in past lives.

Yājñavalkya (II, 95) prescribes that the ordeals of balance, fire, poison and water were to be prescribed in disputes of great value and not elsewhere and in II, 99 he says that all claims above 1000 *paṇas* (of copper) are to be regarded as of great value, but in charges of treason and of the committing of any one of the five grave sins—*mahāpātaka*—any one of these four ordeals may be resorted to without regard to value and without any offer to pay fine on defeat. So also these four ordeals were to be offered to the defendant, where the plaintiff offered to pay a fine on defeat. The ordeal of *kośa* was allowed in all claims whether of high value or low value or whether the plaintiff offered to pay a fine on defeat or not.

1. *Yājñavalkya*, II, 96.
2. *Manu*, VIII, 116.

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Nature of Ordeals

Ordeal was an appeal to the immediate judgment of God. Trial by ordeal was also in vogue in ancient India. In such trials supernatural aid was invoked in the place of evidence. In olden times, many other countries had also adopted this system. We know about its prevalence in Greece, Sardinia, Siam, Cambodia and even England.[1]

The sacred care of the judges is to do justice by ascertaining the truth. Rules of evidence are there for this. But in cases where evidences are not forthcoming and the crime is of serious nature thereby ruling out the possibility of a judicious decision by mere oaths, the judges were scared of incurring sin by doubtful decision. The predominant idea that God helps the just and punishes the unjust is the central theme of the ordeals.

Contemporary *Hindus* believed very much in personal God, who if fervently invoked with religious fervour, would declare the innocence or guilt of a person charged with a grave crime. It was considered to be a divine administration of justice where the innocent are protected and the guilty punished. Since human administration was taken to be a reflection of the divine one, religion played an important part. In the heart of a *Hindu* the belief about divine justice and divine mercy is deep rooted. It is a tradition with Hindus that God protected *Prahalāda* against the wrong punishments of his father *Hiraṇyakaśipu* in which *Prahalāda* came out triumphant and his innocence was fully established.[2] It was in Satyayuga, the golden age that this happened with Prahalāda, in which he was subjected to efforts for destruction by fire, water and such other destruction agents of nature.

In *Tretā yuga*, we come across the story of *Rāma* and *Sītā*. *Sītā* remained in Lanka for some time. To prove her chastity she had to undergo a fire ordeal. She came out victoriously unhurt out of the fire since she was chaste and innocent.[3]

1. Dubey, H.P., *The Judicial Systems of India and Some Foreign Countries*, Bombay, 1968, p. 96.
2. *Viṣṇu Purāṇa*, XVII, 32, 37-38, 42-43, 45-46; XVIII, 4, 30-41; XIX, 12, 17-19, 21-24, 52-62 (see Appendix 2).
3. Mitra, S.C. "Fire ordeals" in QJMS, vol. XXIV, No. 3, p. 12.

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The above and many other similar examples lie in the minds of the *Hindus* who believe in divine interference in injustice.

Bṛhaspati says:[1]

> The testimony of witnesses is apt to become invalid by reason of affection, anger or avarice but an ordeal properly administered never loses invalidity.

Nārada says that justice is based on truth and litigation depends on witnesses.[2] When any ordeal is administered in any particular case, no human evidence, oral or documentary, shall be resorted to. He further says:[3]

> An ordeal shall be administered to parties to a litigation where there is reason for it but not otherwise and that no ordeal shall be administered unless both parties consent to it.

According to him the consent of the claimant is specially necessary.[4] He asserts that the king may inflict ordeals on his own servants even though there may be no undertaking by the adverse party to undergo punishment.[5] He further ordains that the month of *Māgha*, *Chaitra* and *Vaiśākha* are proper months for ordeals of all sorts and not adverse to anyone of them.[6]

All ordeals are to be administered according to established rules by persons well-acquainted with them. If they are administered against the rule, they are inoperative and prove nothing at all.[7] Ordeals administered at improper place or at an improper time or performed at a distance from human habitations are irregular as they infringe the prescribed course of law-suit.[8] According to *Kātyāyana* ordeals should be administered in some well-known temple in the case of men accused of grave sins and near the royal gates in the case of those charged with treason; in a public place where four roads meet in the cases of those born of mixed unions in the reverse

1. *Bṛhaspati*, X, 16.
2. *Nārada*, IV, 5.
3. Ibid., I, 257.
4. Ibid., 258.
5. Ibid., 270.
6. Ibid., VI, 14.
7. *Bṛhaspati*, X, 18.
8. *Nārada*, VI, 15.

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order of castes, in cases other than these in the hall of justice.[1]

Yājñavalkya and *Nārada* prescribe that all ordeals are to be administered by the chief justice in the morning at sunrise or in the forenoon in the presence of the king, the *Sabhyās* and *Brāhmaṇas*.[2] The *Mitākharā* adds that a Sunday is the proper day according to the usage of respectable people.

In case of his being defeated the plaintiff is to undertake to pay some fine. This fine is to be paid to the person who has come out successful from the ordeal. A just king is supposed to honour those who come out victorious from an ordeal with presents.[3]

Kinds of Ordeals

Nārada gives the following seven types of ordeals:[4]

(1) Ordeal by balance (*Dhata*).
(2) Fire (*Agni*).
(3) Water (*Udaka*).
(4) Poison (*Viṣa*).
(5) Libation.
(6) Rice (*taṇḍula*).
(7) Hot piece of gold.

He asserts that strong man should be tested by fire or poison; infants, old and distressed persons by balance.[5] In I, 252 he suggests that the balance, fire, water, poison and sacred libation are the ordeals specially ordained for the purgation of high minded persons.

1. *Kātyāyana* in *Mitākharā* on *Yājñavalkya*, II, 99. cf. *Nārada*, IV. 265

   इन्द्रस्थानेऽभिशस्तानां महापातकिनां नृणाम ।
   नृपद्रोहे प्रवृत्तनां राजद्वारे प्रयोजयेत् ॥
   प्रातिलोम्य प्रसूतानां दिव्यं देयं चतुस्पथे ।
   अतोन्येषु सभामध्ये दिव्यं देयं विदुर्बुधाः ॥
   अदेशकालदत्तानि वहिवसि कृतानि च ।
   व्यभिचारं सदार्थेषु कुर्वन्तीहन संशयः ॥

2. *Nārada*, VI, 15.
3. *Viṣṇu*, XIV, 3.
4. *Nārada*, IV, 251-252; cf. *Yājñavalkya*, II, 95, IV, 337 and 343.
5. *Nārada*, VI, 10.

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Manu mentions only two ordeals:[1]

(1) holding of fire, and
(2) plunging in water.

Śaṅkhalikhita gives the names of four:[2]

(1) balance,
(2) poison,
(3) fire,
(4) holding hot iron.

Viṣṇu[3] and *Yājñavalkya*[4] give a list of five, namely:

(1) balance,
(2) fire,
(3) water,
(4) poison,
(5) consecrated water.

As already stated, Nārada has given seven types of ordeals, two of which, namely, the ordeal of rice grains and heated piece of gold are new to the list given by *Viṣṇu* and *Yājñavalkya*. *Bṛhaspati* and *Pitāmah* suggest the following nine ordeals by adding two more, namely, the ordeals of ploughshare and figure of *Dharma*,[5] viz.:

(1) the balance,
(2) the fire,
(3) the water,
(4) the poison,
(5) sacred libation,
(6) grains of rice,

1. *Manu*, VIII, 114.
2. *Śaṅkhalikhita Dharmasūtra* quoted in *Sm. ch.*, II, p. 96
   तत्र दिव्यं नाम तुलाधारणं विषाशनमाग्नि प्रवेशो लोहधारणमिष्टापूर्त प्रदानमन्याश्च शपथान् कारयेत् ।
3. *Viṣṇu*, IX, 10-11.
4. *Yājñavalkya*, II, 95
   तुलाग्न्यापो विषं कोशो दिव्यानीह विशुद्धये ।
   महाभियोगेष्वेतानिशीर्षकस्थेऽभियोक्तरि ॥
5. *Bṛhaspati*, X, 4-5; VII, 3-4. cf. *Pit. S.* quoted by *Vijñāneśvara* on *Yājñavalkya*, II, 95
   धटोऽग्निरुदकं चैव विषं कोशस्तथैव च ।
   तण्डुलाश्चैव दिव्यानि सप्तमस्तप्तमापकः ॥

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(7) hot piece of gold,
(8) ploughshare, and
(9) dharma.

(1) *The ordeal by balance*

The person performing this ordeal is twice weighed on a scale, if at the second time he appears to be lighter than before, he is considered to be innocent, if he is heavier he is guilty. *Nārada* lays down the description and measurements of the apparatus for performing this ordeal.[1] A physical balance was prepared from the *Khadira* or *udumbara* tree. This balance consisted of two wooden posts, each three yards long, firmly planted a yard below ground and two feet three inches (four *hastas*)[2] apart supporting a transverse beam two yards long and facing the west and east. Two scales were suspended from the beam of the balance at its two ends by iron hooks and by four strings each. Each of the two scales should move in a wooden arch which marks the position of the scales. The wood used is either of the *Khadira* tree or of the *Tinduka* tree or of *Simsapa* tree according to *Viṣṇu*.[3]

Nārada directs that the apparatus should be set up either in the midst of a public assembly or before the gates of the Royal palace or in sight of a temple or in a cross-road.[4] He further adds that certain purificatory and auspicious ceremonies should be performed with sour milk, whole grain, clarified butter and perfumes and the balance decked with perfumes, garlands and unguents.[5]

Then the man who is to undergo the ordeal, says *Nārada*, is placed on one scale on the northern side and a stone is put in the other scale on the southern side. He is evenly balanced by good expert and then descends from the balance.[6] Then he is admonished with solemn imprecations and is caused to get into the scale again. A writing is fastened on his head.

1. *Nārada*, I, 261-263.
2. *Viṣṇu*, X, 2.
3. Ibid., 3.
4. *Nārada*, I, 265.
5. Ibid., 266.
6. Ibid., 271-275.

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Nārada gives the following *mantras* to be recited by a *Brāhmaṇa*, holding the scale in his hand:[1]

> Thou art called *Dhata* (a balance), which expression also means *dharma* or justice, Thou knowest both the bad and good actions of all beings. Thou art superior to gods, demons and mortals in point of veracity. This man who stands accused in a cause is weighed upon thee. O propitious being, deign to speak truth and deliver him from this perplexity. If he is guilty, take him down; if he is innocent, take him upwards, so that he may be delivered lawfully from the perplexity in which he is involved.[2]

After this ceremony is performed the man descends from the scale and his guilt or innocence is declared just as he goes down or goes up in the scale. If his weight remains the same as before, he is held guilty.[3] But *Bṛhaspati*, however, says that if he remains level he shall be balanced once more.[4] Thus the facts will be ascertained positively and a just sentence be the result. A worthy *Brāhmaṇa*, learned in astronomy is to calculate the time of 5 *palas*.

In case of accident such as breaking of the scales, the splitting of the beams or the hooks, or the bursting of the strings, the man is to be declared innocent. Here in this case also, *Bṛhaspati* gives a contradicting opinion. He desires that the defendant is to be declared guilty in the above circumstances.[5] *Viṣṇu* appears to be more judicious when he says that in such a case of accident the man should be placed once more in the scale so that the facts may be ascertained positively and a just sentence passed accordingly.[6]

Nārada prescribes that a *Brāhmaṇa* should be tested by this ordeal.[7] He suggests that eunuchs, distressed and feeble persons,

1. *Nārada*, I, 278-281.
2. It may be noted that *Yājñavalkya* puts the entire address in the mouth of the person undergoing the ordeal, whereas all the other writers put it in the mouth of a third person. cf. *Yājñavalkya*, II, 102-104; *Viṣṇu*, X, 10-11.
3. *Nārada*, I, 283.
4. *Bṛhaspati*, X, 19.
5. Ibid., 20; cf. *Nārada*, I, 284.
6. *Viṣṇu*, X, 30.
7. *Nārada*, I, 334-335.

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severely affected persons, infants, old man, woman and the blind should be tested by the ordeal of balance.[1] *Viṣṇu* also confides that the women, *Brāhmaṇa*, persons deficient in an organ of sense, infirm (old men) and sick persons must be administered by this ordeal[2] but it must not be resorted to while a wind is blowing. True state of the mind of woman is to be examined by this ordeal.[3] Nārada says that the ordeal by balance can be resorted to in any season.[4] According to him there should not be wind and rainfall at the time of the performance of this ordeal.[5]

(2) *The ordeal by fire*

A glowing iron ball has to be carried to a certain distance, the accused, however, in order to protect his hand from being burnt may at first cover his hand with a layer of leaves. He will not be considered guilty if his hand is not burnt. If he lets the ball too early, or it is doubtful whether he has been burnt or not, the trial is to be repeated.

About the procedure to be followed and decision to be arrived at by fire ordeal, the following points of *Nārada* are both important and interesting. Nine concentric circles with cowdung are to be drawn from west to east, they being meant for *Agni*, *Varuṇa*, *Vāyu*, *Yama*, *Indra*, *Kubera*, *Soma*, *Sāvitrī* and all gods, each sixteen *Angulas* in breadth are marked on a piece of ground, the intervals being of the same breadth. *Viṣṇu* has, of course, given the number of the circles to be seven.[6] In each circle *Kuśa* grass was to be spread and the person to be tested was to plant his feet on them, *ghee* was to be offered into fire 108 times.

Seven leaves of the holy fig tree should be placed in the hands of the defendant, fastened with seven threads. He must turn his face towards the east and stretch out both arms.[7]

1. *Nārada*, VI, 8.
2. *Viṣṇu*, IX, 23; cf. *Yājñavalkya*, II, 98.
3. *Nārada*, VI, 9.
4. Ibid., I, 260.
5. Ibid., 259, 276.
6. *Viṣṇu*, XI, 2.
7. cf. *Viṣṇu*, XI, 3-12.

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All previous and existing scars on the hands are coloured with dots.[1]

At the beginning (of the whole ceremony) the judge shall cause the person to rub some rice in his hands and shall mark (with red sap, or the like, the already existing scars, eruptions of the skin which will thus have become visible). Then the judge after having addressed the iron ball (with the following prayer) shall place it in his hands.[2]

> Here is the law of *Manu*, obeyed by the guardians of the world. Thou O fire, art the means of purification and the exalted mouth of all the gods. Thou knowest the real affair as thou dwellest in the heart of all beings. The *Vedas* and all other sacred books attribute truth and falsehood as proceeding from thy tongue. Do not show thyself unworthy of this character. Here is a man who has denied the plaintiff's charge and is ready to falsify it by this ordeal. Conflicting in truth he holds thee in his hands. Be cool for him, if he speaks the truth, but burn his hands, I implore thee, if he should tell a lie as sinner.

The above prayer is to be recited and written on a leaf which should be tied on the defendant's head and then the fiery, sparkling and red-hot iron ball should be placed in his hands.[3]

Having bathed he should carry the ball walking slowly through the circles and may drop it on reaching the eighth circle. He shall take in his hands grains of rice and crush them seven times with all his might so that the wound, if any, be visible.[4]

If his hands appear to be unburnt, he is honourably acquitted as innocent, if burnt he shall be duly punished.[5] If he lets the ball drop from fear or if any doubt arises as to whether he is burnt or not he shall take the ball once more because the proof has not been adequately decided. The proceeding, in such a case, is thus repeated.[6]

The hands, according to *Nārada*, were to be carefully exa-

1. *Nārada*, I, 290-294.
2. Ibid., 295.
3. Ibid., 296-297, 300.
4. Ibid., 303.
5. Ibid., 298; cf. *Viṣṇu*, XI, 9.
6. Ibid., IV, 302-303

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mined by the members of the court and if it does not appear that the two hands are burnt he shall take rice-grains in his hands and crush them seven times with all his might. The grains having been crushed by him, the members of the court declare him to be unburnt and he is honourably released and if found burnt (by not being able to crush the grains in the hands), he is to receive the due punishment.[1]

Kātyāyana prescribes that the ordeal of fire should not be offered to blacksmith or those who are leprous nor of water to those who ply boats or who suffer from difficulty in breathing or cough, nor poison to those who are experts in incantations and *Yogic* practices or who suffer from (excess of) bile or phlegm, nor *Kośa* to those who are drunkards, to persons fond of woman, to gamblers and to those who are atheists. *Viṣṇu* and *Nārada* contain similar provisions.[2] According to *Nārada* this ordeal should be administered in the rainy season.[3] He prohibits the performance of this ordeal in hot season and prescribes chilly, cold and rainy season.[4] *Viṣṇu* ruled out the performance of the administration of this ordeal in autumn or summer.[5] One hundred and fifty *paṇas*, says *Nārada*, should be given to the defendant if he has been held innocent. If declared guilty he is punished.[6]

(3) *The ordeal by water*

The man who is going to be tried immerses himself into a lake or a river and he must keep himself under water until an arrow, which was shot away at the same time, is brought back by a fleet runner. *Nārada* describes this ordeal as follows:[7]

यदा तु न विभाव्येत दग्धाविति करौ तदा ।
व्रीहीनति प्रयत्नेन सतप्वारं तु मर्दयेत् ॥
मर्दितैरेप नो दग्धः सभ्यैरेव विनिश्चितः ।
भोक्ष्य शुद्धः स संस्कृत्यदग्धोदण्डना यद्याक्रमम् ॥

1. *Viṣṇu*, IX, 25; cf. *Nārada*, I, 255, 332.
2. *Nārada*, VI, 12.
3. Ibid., I, 259.
4. Ibid., 259 & VI, 13.
5. *Viṣṇu*, IX, 26.
6. *Nārada*, I, 336.
7. Ibid., 305; cf. *Viṣṇu*, XII, 2-8.

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This ordeal may be performed in oceans, rivers, streams not having too swift a course, lakes, natural reservoirs, tanks or pools. The water must be transparent and very cool, abundant and not too shallow, containing no aquatic animals or mud. Three arrows are to be discharged from a target at a distance of one hundred and fifty *hastas*. The archer is to blame if the arrows fall short of or go beyond the target.[1] (The rule regarding the distance of the target which renders the arrows entirely superfluous seems to belong to a more recent period than the other rules.) A strong man should place himself in water reaching to his navel, and the defendant should seize him by the thigh and dive under water.[2] A swift runner should be sent after the second arrow from the place of its discharge and from the moment of the plunge, and when he has reached the place of its fall, another swift runner should take the second arrow and run to the place it came from.[3]

Before the diving actually takes place, an intelligent pious man after worshipping *Varuṇa*, the god of water, should offer up a prayer in the following words:

Thou *Varuṇa*, who art so pleasantly cool, art the source of all beings. Thou knowest both good and evil, save this man from guilt (if he is not guilty). Thou art the chief of the gods and the great comforter of the world. Thou appearest as a witness, in the interior of all beings. Thou alone knowest what is incomprehensible to others. This accused is going to dive in thee. Therefore deign to deliver him lawfully from this perplexity.

Thereupon the discharge of arrows, the race and the plunge take place. If during the race of the two runners, the defendant remains under water, and no part of his body is visible, he is declared innocent; otherwise he is held guilty. He is also pronounced guilty, if during the plunge he has shifted his position.[4]

1. *Nārada*, I, 306; VI, 55-56.
2. Ibid., I, 308.
3. Ibid., I, 309, 310.
4. Ibid., I, 311-312; VI, 67.

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Nārada[1] and *Yājñavalkya*[2] prescribe that a *Vaiśya* should be tested by the ordeal by water. The distressed shall not be subjected to this ordeal. Women, children, sick, superannuated and feeble men must not be subjected to this ordeal.[3] This ordeal must not be administered to persons afflicted with phlegm or another illness, to the timid, to the asthmatic, nor to those who gain their subsistence from water such as fisherman and the like.[4]

Similarly cowards and persons tormented by pain or afflicted by a calamity should be exempted from this ordeal. Since such persons do not have any breath and are likely to die immediately after diving. Even if they be accused of a serious crime they must not undergo ordeals by water, fire and poison. This ordeal is not to be administered to woman.[5]

The ordeal by water is inapplicable in the season called *Hemanta* and *Śiśira* (i.e. from the middle of November to the middle of March).[6] It must not be performed in the winter and dewy seasons.[7] It is destined for the hot season.[8] *Pitāmah* specially provides that this ordeal should be administered in the noon.

(4) *The ordeal by poison*

After worshipping *Maheśvara* with incense and the like poison placed before the image of *Maheśvara* is to be administered in the presence of (image of) gods and *Brāhmaṇas*. A certain quantity of poison has to be taken and for some time it is watched whether the poison begins to act or not.

Nārada describes this ordeal as follows:[9]

Poison from the *Śringa* plant found in the *Himālayas*, of

1. *Nārada*, I, 334-335.
2. *Yājñavalkya*, II, 98.
3. *Nārada*, I, 313-314.
4. *Viṣṇu*, IX, 29; cf. *Nārada*, VI, 11.
5. *Nārada*, VI, 9.
6. *Viṣṇu*, IX, 28, 31.
7. *Nārada*, I, 304.
8. Ibid., 334.
9. Ibid., 321-322

भग्नं धारितं चैव धूपितं मिश्रितं तथा ।
कालकूटमलाबुं च विषं यत्नेन वर्जयेत् ॥
शाङ्गं हैमवतं शस्तं वर्गगंधरसान्वितम् ।

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good quality and of natural condition, having colour, flavour and taste should be administered to members of castes other than those of the *Brāhmaṇic* caste. Spoiled poison, shaken poison, scented and mixed poison, as well as *Kalakut* and *Alabu* poison should, on no account, be administered.

The quantity of poison to be given is stated as follows:[1] Six *yavas* in the rainy season, five in the hot and seven or eight in the winter season and it is to be mixed with clarified butter.

The following prayer is addressed to poison:[2]

> On account of thy venomous and dangerous nature thou art destruction to all living creatures; thou a poison, knowest what mortals do not comprehend. This man being arraigned in a cause, desires to be cleared from guilt. Therefore mayest thou deliver him lawfully from this perplexity.

After the poison is administered, the man is kept in a shady place without taking food for the remainder of the day. If the poison is digested easily, without violent symptoms such as convulsions etc. he is declared innocent and is dismissed at the end of the day.[3]

This ordeal may be administered to persons of all castes excepting the *Brāhmaṇas* but *Nārada* prescribes that a *Śūdra* should be tested by the ordeal by poison.[4] Persons suffering from disorder of biles will not be made to undergo ordeals by poison and this ordeal is not to be administered to woman.[5] Lepers and Phlegmatic persons will also be exempted from this ordeal.[6] This ordeal should not be administered to infants, disabled, superannuated persons, persons guilty of slight offences, persons severely affected, mad man, crippled or ascetics.[7]

This ordeal should be administered in cold weather. According to *Viṣṇu*, this ordeal is inapplicable in the rainy season.[8]

1. *Nārada*, I, 323-324; cf. *Viṣṇu*, XIII, 4.
2. *Viṣṇu*, XIII, 67.
3. *Nārada*, IV, 326; cf. *Viṣṇu*, XIII, 5.
4. Ibid., I, 334-335; cf. *Yājñavalkya*, II, 98.
5. Ibid., I, 255; VI, 9, 11.
6. Ibid., cf. *Viṣṇu*, IX, 27.
7. Ibid., VI, 72.
8. *Viṣṇu*, IX. 27.

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For this ordeal *Nārada* prescribes cold and chilly season to be the suitable season.[1] He prohibits the performance of this ordeal during the rains and suggests that this ordeal should be administered in the autumn season when winter sets in. It must not be resorted to in the afternoon, nor in the twilight, nor at noon, nor in the autumn, summer, spring and rainy seasons though such prohibition was not strictly enforced so far as rainy season and summer season are concerned.[2] *Pitāmah* specially provides that this ordeal should be administered in the last watch of the night.[3]

(5) *The ordeal by sacred libation*

Nārada describes this ordeal as follows:[4]

The consecrated water shall be given early in the morning to a virtuous man, who is a believer in God, after he shall have fasted, bathed and put on wet clothes. The man undergoing the ordeal is required to drink three mouthfuls of water in which the image of the deity (such as *Durgā*, the *Ādityas* or others)[5] held sacred by him has been bathed and worshipped after having turned his face towards the sun,[6] uttering at the same time the words, 'I have not done this', with his face turned towards the deity in question.

If after undergoing the ordeal, the man is subjected to any calamity within a week or fortnight, he shall be regarded as guilty. But no misfortune, however great, befalling him after the lapse of a fortnight can go against him, by reason of the fixed period having elapsed.[7] A just king should honour (with presents of clothes, ornaments) one who has cleared himself from guilt by an ordeal.

Nārada says that this ordeal is applicable to all castes,[8] and he further adds that this ordeal can be adhered to in all seasons indiscriminately by learned men. It should be perform-

1. *Nārada*, VI, 13.
2. *Nārada*, I, 324.
3. *Mitāksharā* on *Yājñavalkya*, II, 97.
4. *Nārada*, I, 328.
5. *Viṣṇu*, XIII, 2.
6. *Nārada*, I, 329; VI, 81.
7. Ibid., I, 330-331.
8. Ibid., VI, 6.

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ed early in the morning.[1] He says that the state of the mind of woman is to be examined by this ordeal.[2] This ordeal should not be administered when the country is afflicted with disease or pestilence.[3] It should be avoided in the cases of great criminals, irreligious or ungrateful man, eunuchs, low rascals, atheists, *vrātyas* and slaves.[4] This ordeal is not to be administered to *Brāhmaṇa* and to atheist.[5]

(6) *The ordeal by rice*

Consecrated grains of unhusked rice shall be chewed and then spitted out on a leaf, if now blood is seen with them, the guilt is proved therewith. *Nārada* describes this ordeal as follows:[6]

The judge after having cleansed himself is to place white grains of rice, and not any other grains, in an earthen vessel, in front of the image of Sun God. The grains are to be mixed with water in which the image has been bathed, and should be left there for a night. Early in the morning a priest after having prepared the grains three times, is to deliver them to the defendant, who is required to face the east after having proclaimed the charge himself, in order that real truth may come out.[7]

The defendant who is accused of larceny (for it is in regard to such an offence that the ordeal is applicable) is required next to chew the grains and to spit them on the leaf either of a fig tree or of the birch tree.[8] He must chew at a time when the sun is not visible. If blood issues forth, the tooth flesh be hurt, or the man trembles while the ordeal is going on, he is pronounced as guilty; otherwise he is acquitted.[9] *Nārada* directs that this rice ordeal should be administered in cases of larceny (theft) only.[10]

1. *Nārada*, I, 327-328.
2. Ibid., VI, 9.
3. *Viṣṇu*, IX, 31-32.
4. *Nārada*, I, 332.
5. *Viṣṇu*, IX, 15, 31.
6. *Nārada*, I, 25, 338-339.
7. Ibid., 340.
8. Ibid., I, 25, 337, 341.
9. *Nārada*, I, 25, 342; *Bṛhaspati*, X, 25.
10. Ibid., 337.

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(7) *The ordeal by the hot-piece of gold*

A coin has to be fished out of a vessel full of a boiling fluid such as butter or oil, if in doing this his hand is not injured the accused is acquitted. *Nārada* describes this ordeal as follows:[1]

The judge after having cleansed himself is required to place a golden, silver, iron or earthen vessel on the fire and to pour into it clarified butter. A shining coin made of gold, silver, copper, or iron being washed more than once is next to be thrown into the vessel. The judge then offers up the following prayer to the clarified butter:[2]

> Thou clarified butter, thou art the best instrument of purification. Thou art the very Ambrosis at a sacrifice. Burn this man at once if he is guilty and be as cold as ice to him if he is otherwise.

The accused is to pick out the coin from the vessel out of the boiling liquid of butter, with the thumb and forefinger, if the hand remains unhurt and shows no boils, he is declared innocent; otherwise he is held guilty.[3] He whose finger ends do not tremble, and who is not blistered is held to be innocent.[4]

(8) *The ordeal by ploughshare*

The accused has to lick a red hot ploughshare without however having his tongue scorched thereby. *Bṛhaspati* describes this ordeal as follows:[5]

A ploughshare is to be formed out of iron, twelve *palas* in weight, and should be eight *angulas* long by four *angulas* broad. It should be made red hot in fire and then a prayer is to be addressed to the God of Fire. The accused who is charged

1. *Nārada*, I, 344-345.
2. Ibid., 347.
3. Ibid., 348.
4. *Bṛhaspati*, X, 27; Pit. S. quoted by *Aparārka* on *Yājñavalkya*, II, 113
   कारयेदायसं पात्रं वाऽथ हिरण्मयम् ।
   चतुरङ्गुलमुत्सेधं मृण्मयं वाऽपि वर्तुलम् ।
   पूरयेद्घृत तौलाभ्यां पलैर्विंशतिभिस्तुतत् ॥
   सुवर्गमाषकं तस्मिन्सुतप्ते निक्षिपेत्ततः ।
   अङ्गुष्ठांङ्गुलियोगेन चोद्धरेत्त प्रभाषकम् ॥
5. *Bṛhaspati*, X, 28; SBE XXXIII, p. 318, v. 28.

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with theft, is to lick at the heated ploughshare. If he is not burnt, he is acquitted; otherwise he is held guilty.[1]

(9) *The Dharma ordeal*

Figures or pictures of justice (*dharma*) and injustice (*adharma*) are put in a vessel as lots; now it depends on the accused hitting on the right lot. *Bṛhaspati* describes this ordeal as follows:[2]

A white image of *Dharma* should be painted on one leaf and a black image of *Adharma* painted on another leaf. The two leaves should then be invoked with prayers and should be duly worshipped with perfumes, and white and black flowers etc. They should be enclosed in two balls made of earth and of equal size. Then the two balls should be placed unobserved in a fresh jar, one containing the painting of *Dharma* and the other that of *Adharma*.

The accused should then be called upon to take out a ball from the jar and should repeat the word—"I am free from guilt may (the image or picture of) *Dharma* come to my hands." If he takes out *Dharma* he is honestly acquitted, if he takes out *Adharma*, he is held guilty.

Scope of Trial by Ordeals

According to *Nārada* if no witness is forthcoming for either of the litigant parties they are to be tested through ordeals and oaths of every sort.[3] He further says:[4]

1. *Bṛhaspati*, X, 29
   अग्निवर्णं तु तच्चोरो जिह्वया लेलिहेत्सकृत् ।
2. Ibid., VIII, 82-85
   पत्रद्वये लेखनीयौ धर्माधर्मौ सितासितौ ।
   जीवदानादिभिर्मन्त्रैः गायत्र्याद्यैश्चसामभिः ॥
   आमन्त्र्य पूजयेद्गन्धैः कसुमैश्च सितासितैः ।
   अभ्युक्ष्य पञ्चगव्येन मृत्पिण्डान्तरितौ ततः ॥
   समीकृत्वा तु तौ कुम्भे स्थाप्यौ चानुपलक्षितौ ।
   ततः कुम्भात्पिण्डमेकं प्रगृह्णीता विलम्बितः ॥
   धर्मे गृहीते शुद्धः स्यात्स पूज्यश्च परीक्षकैः ।
   अधर्मे सङ्ग्रहीते तु दण्ड्यो निर्वास्य एनवा ॥
3. *Nārada*, I, 247, 249-250.
4. Ibid., 251.

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Where a heavy crime has been committed the king shall administer one of the ordeals. In doubtful cases specially when cases are of a recondite nature, he (*Nārada*) suggests administration of ordeals.

The following are the situations and cases in which *Nārada* has suggested trial by ordeals:

(1) Ordeals are administered if an offence has been committed in a solitary forest, at night, in the interior of a house, or where there has been a heinous offence committed, or where there has been a denial of deposit.[1]

(2) Ordeals are likewise applicable in the case of women whose morality has been impeached, in regard to theft and robbery and in all cases where an obligation has been denied.[2]

Bṛhaspati has suggested trial by ordeals in the following cases:

(1) A forger of gems, pearl or coral, the withholder of a deposit, a ruffian and an adulterer, shall be tested by oaths or ordeals in every case.[3]

(2) A person accused of a grave crime, and the appropriator of a deposit should be tried by ordeal by the king, even though there be witnesses.[4]

(3) An ordeal is to be administered when a thing has happened long ago or in secret or when the witnesses have disappeared long ago or they have all perjured themselves.[5]

(4) When there is doubt as to a document or oral evidence and all reasoning fails to arrive at the truth, purgation through ordeal is the proper test.[6]

Viṣṇu gives a ruling that in cases like the ones enumerated below, trial by ordeals should be resorted to:

1. *Nārada*, I, 241.
2. Ibid., 242.
3. *Bṛhaspati*, X, 1.
4. Ibid., 2.
5. Ibid., 3.
6. Ibid., 17.

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(1) In cases of criminal action against the king or cases of violence ordeals are to be administered indiscriminately.[1]

(2) In cases of denial of a deposit or of alleged theft or robbery ordeals shall be administered each according to the value of the property concerned.[2]

(3) To one formerly convicted of a crime a judge must administer one of the ordeals even though the case against him be ever so trifling.[3]

(4) The defendant should be summoned at the time of sunrise to go through the ordeal intended for him.[4]

Limitation of Ordeals

Nārada directs that the dictates of justice required that no ordeals should be administered to persons engaged in performing a vow, to those distressed under heavy calamity, to the diseased, to the ascetics or to the woman.[5]

He further ordains that no ordeal should be administered unless the opponent of the party undergoing the ordeal declares himself ready to undergo punishment in case of his being defeated by reason of the party coming out successful from the ordeal though this rule does not apply to cases of high treason.[6] He suggests that ordeals should not be administered in the afternoon nor in the twilight.[7]

Nārada gives an exception to this general rule given above that the king may inflict ordeals on his servants although there may be no undertaking by the adverse party to undergo punishment.[8]

Viṣṇu presents his hypothesis by saying:

No ordeal should be administered to one who is known as honest and virtuous though the matter in contest be ever so important.[9]

1. *Viṣṇu*, IX, 2.
2. Ibid., 3.
3. Ibid., 18.
4. Ibid., 33.
5. *Nārada*, I, 256.
6. Ibid., 257, 259; *Viṣṇu*, IX, 22.
7. Ibid., VI, 14.
8. Ibid., I, 270.
9. *Viṣṇu*, IX, 19.

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Recommended Preliminaries

As recommended preliminaries before ordeals the hypotheses of *Nārada* and *Viṣṇu* are noteworthy. *Nārada* lays down the following procedure:[1]

> The chief judge, who must be a *Brāhmaṇa*, well versed in the *vedas* and *vedāṅgas*, thoroughly religious, calm and modest, must superintend the whole of the proceeding at an ordeal, remain fasting and carry out the royal instructions in the same way as a priest at a sacrifice. He must appear in his wet clothes with his teeth well cleansed and worship the deities in the proper form.

About the person undergoing the ordeal he says:[2]

> The person undergoing the ordeal must have fasted for a day and a night, taken a bath and worn his wet dress.

Viṣṇu lays down:[3]

> The judge having fasted on the previous day and appearing in his wet dress after a bath, summons the defendant to appear at the time of sunrise and causes him to go through the ordeal in the presence of the images of Gods and of *Brāhmaṇas*.

He desires that before any ordeal is gone through, the claimant must undertake to pay the fine which becomes due in the case of his being defeated. The defendant is then made to go through the ordeal. But no such undertaking is essential where the person to whom the ordeal is administered is accused of a criminal action against the king or of violence or happens to be the servant of the king.

1. *Nārada*, VI, 16, 19.
2. Ibid., I, 268.
3. *Viṣṇu*, IX, 33.

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CHAPTER FIVE

Decision

Fourth Stage

This last stage of a judicial proceeding, according to *Yājñavalkya*[1] is called *siddhi*. When the evidence has been led the king or chief justice should with the help of the *Sabhyās* decide upon the success or failure of the plaintiff.[2] *Nārada* says that the *sabhyās* should ask the parties to leave the court when they are considering their verdict or what decision was to be pronounced.[3] It is stated by *Vyāsa* and *Śukra* that the decision of a case is based on eight sources (according to Śukra) viz. the three *pramāṇas* (possession, documents and witnesses), logical inference, the usages of the country, *Śapathas* (oaths and ordeals), the king's edict and the admission of the litigants.[4]

Pitāmah prescribes that, in disputes where there are no witnesses, no possession nor documents and no recourse can be had to divine proof, there the king is the final deciding factor as he is lord of all.[5] It is stated by *Nārada*[6] that, whether a party is defeated by his own admission or by his own

1. *Yājñavalkya*, II, 8.
2. Quoted by P.V. Kane in HDS Vol. III, p. 379
   उक्त प्रकार रूपेण स्वमत स्थापिता क्रिया ।
   राज्ञा परीक्ष्य सभ्यैश्च स्थाप्यौ जय पराजयौ ॥
3. *Nārada*, II, 42.
4. *Vyāsa* in *Vyavahāra Nirṇaya*, p. 138; cf. *Śukra*, IV, 5, 271.
5. *Pitāmah* quoted by *Sm. ch.*, II, 26.
6. *Nārada*, II, 41, 43
   लेख्यं यत्र न विधेत न भुक्तिर्न च साक्षिणः ।
   न च दिव्यावतारोस्ति प्रमाणे तत्र पार्थिवः ॥
   निश्चेतुं ये न शक्याः स्युर्वादाः सन्दिग्धरूपिणः ।
   तेषां नृपः प्रमाणं स्यात्स सर्वस्य प्रभुर्यतः ॥

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conduct (i.e. because he adduces false witnesses or forged documents) or whether he is defeated after full trial and the adducing of proof, it is proper that the defeat should be declared by the *Sabhyās* (the judge) and that a *jayapatra* (a document of success i.e. a judgement) should be given to the successful party couched in fitting terms.

In this fourth stage of the trial the judge is to come to a decision in regard to matters of dispute. As we have seen, in the case of oaths and ordeals, the decision entirely depends on them. The judge has no further discretion in that matter. But when evidence is gone into, the matter presents difficulty and the judge is to decide as to which evidence he is to accept and which to reject. To help him out from this difficulty there are certain prescribed rules for him to go by.

At the trial, the judges heard both the plaint and the answer of the witnesses, of course, with that mandatory (but not imperative) tradition of examining them in order of caste.[1]

The party on whom the onus of proof lies is to substantiate the whole of his declaration by documents or other proofs. The plaintiff shall prove his declaration and the defendant his special plea. A plea of resjudicata is to be proved by the defendant by producing the previous judgement. In the case of a denial of the plaintiff's case the latter shall prove the allegations of the plaint.[2]

In case of a disputed claim, the plaintiff is to examine the witnesses but where the defendant admitting the claim makes a special plea, he is also to examine his witnesses.[3] The judge then decides the case on the evidence tendered and in view of the circumstances of the case.

Where the allegations of plaint have been fully corroborated by the witnesses, the testimony is held as satisfactory and the plaintiff wins—in every other case the plaintiff fails.[4] In a conflict between witnesses, the depositions of the majority should be received, when the number is equal on both sides—the testimony of the more virtuous ones should prevail, when the virtuous witnesses are divided—the depositions of those

1. *Viṣṇu*, VIII, 37.
2. *Bṛhaspati*, V, 1-3, 20.
3. *Viṣṇu*, VIII, 10-11.
4. *Bṛhaspati*, VII, 32.

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specially eminent for the performance of religious acts should predominate and when they are divided—the testimony of those possessed of superior memory should have preference.[1]

Where there is conflicting evidence—the testimony of the majority decides the matter. If the number of witnesses is equal on both sides—those whose veracity is above suspicion are to be relied on. If again, the number of witnesses is equal on both sides—the testimony of witnesses endowed with a superior memory is to be accepted.[2]

The nature of the law of evidence is so subtle that if there be equal number of witnesses possessed of a good memory on both sides, their evidence becomes entirely valueless.[3] When at the proper time of his examination, a witness does not make a consistent statement in regard to questions put to him—his testimony is regarded as good for nothing.[4]

Discrepancies as to place, time, age, matter, quality, shape and species make testimony of witnesses quite worthless.[5] If the witnesses wrongly name too high or too low a sum their evidence is of no effect.[6] If the plaintiff's statement is declared by the witnesses to be true he shall win the suit but if it is declared to be false he shall lose it.[7]

If there is contradictory evidence the decision of the king rests on the testimony of the majority of the witnesses. If equality exists in the numbers the decision is to be taken on superiority in virtue. And if equality exists in virtue also the decision should rest on the evidence of the best among the twice-born.[8]

After evidence is thus accepted or rejected according to the foregoing rules, the case is decided and a written judgement is delivered and decree passed. He is said to have won the cause who has established his claim and has been honourably dismissed by the judges by a document recording his success.[9]

1. *Bṛhaspati*, VII, 35.
2. *Nārada*, I, 229.
3. Ibid., 231.
4. Ibid., 232.
5. Ibid., 233.
6. Ibid., 234.
7. *Viṣṇu*, VIII, 38.
8. Ibid., 40.
9. *Bṛhaspati*, VI, 1.

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The victorious party received a document from the king in which the plaint, answer and sentence were recorded.[1] It was a decree—a document of success by which the claim of the winner is established in which the four parts of a judicial proceeding *Chatuṣpada* were recorded.[2] *Yājñavalkya* defines this *Chatuṣpada* as having the following four elements:[3]

(1) The plaint,
(2) The reply,
(3) The proof, and
(4) The decision.

Kātyāyana defines this term to comprise of:[4]

(1) The plaint,
(2) The reply,
(3) Pratyākālita, and
(4) Kriyā.

P.V. Kane observes—*Dharma* and the other three are really the four feet of *Nirṇaya* (final decision), which is one of the four stages of the law suit (*vyavahāra*) and so only in a secondary or far-fetched sense they are the four *padas* of *vyavahāra*.[5]

As already seen the contents of the judgement contain a brief statement of the plaint, the reply, the evidence, the depositions of witnesses, discussion thereof, arguments, the *Smṛti* texts applicable, the opinion of the *Sabhyās*, the decision and the relief granted and should be signed by the chief justice and bear the royal seal.[6]

1. *Bṛhaspati*, VI, 4.
2. The *Chatuṣpada* means having four feet namely—*dharma, vyavahāra, charitra* and *rājaśāsana*. cf. *Nārada*, I, 10.
3. *Yājñavalkya*, II, 8.
4. Quoted by *Aparārka*, p. 616.
5. HDS, III, p. 260.
6. *Nārada*, quoted by *Aparārka*, p. 684

   सकलं पूर्वपादं च सोत्तरं सक्रियं तथा ।
   सावधारणकं चैव तज्ज्ञेयं जयपत्रकम् ॥

   cf. *Vaśiṣtha* quoted by *Mitākṣharā* on *Yājñavalkya*, II, 91 and *Aparārka*, p. 684

   यथोपन्यस्तसाध्यार्थसंयुक्तं स्योत्तर क्रियम् ।
   सावधारणकं चैव जयपत्रकमिष्यते ।।
   प्राड्विवाकादिहस्ताङ्कं मुद्रितं राजमुद्रया ।
   सिद्धेऽर्थे वादिने वधाज्जयिने जयपत्रकम् ॥

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Vaśiṣtha refers to precedents also in the decision of cases and the awarding of punishments.[1]

The *Mitāksharā* quotes a *Smṛti* text (on *Yājñavalkya* II, 91) that other members of the assembly (who are not judges) proficient in *Smṛti* may also sign the judgement to show that the decision is acceptable to them also. But this was not absolutely necessary, as is made clearly by the *Vivādachandra*.[2]

Kātyāyana applies the word *paśchātkāra* (refutation)[3] to a judgement containing the above particulars given after a complete contest, while he restricts the word *jayapatra* to a document (given by the judge) when a plaintiff becomes what is called *hīnavādī* (because he makes a change in his pleading or for similar cause) and when there has been no complete trial of an action; and such a document embodies only what happened.

The *Mitāksharā* (on *Yājñavalkya* II, 91) differing from *Kātyāyana* holds a *jayapatra* to be a judgement giving a summary of the plaint, the reply, the evidence and the decision, while when a plaintiff is defeated for change of pleading or for default of appearance or for non-prosecution the document stating this is called *hīna patraka*.

The *Mitāksharā* (on *Yājñavalkya* II, 91) and *Vyavahāra Mātṛkā* (p. 389) note that a *jayapatra* is given specially to prevent the same matter being agitated again, while a document given where a party is *hīnavādī* serves the purpose of making that party liable later on to pay a fine. When a dispute was decided by a domestic tribunal there was no *jayapatra* but only a *nirṇayapatra*.

Cost, Court Fee and Fine

System of court fee did not pretail. It was considered to be the religious duty of the king to administer justice and no remuneration in any form was demanded. When the judges

1. *Vaśiṣtha*, XIX, 10.
2. *Vivādachandra*, p. 246.
3. *Kātyāyana*, quoted by *Sm. ch.* II, 57-58
   निरस्तास्तु क्रिया यत्र प्रमाणेनैव वादिना ।
   पश्चात्कारो भवेत्तत्र न सर्वासु विधीयते ॥
   अन्यबाधादिहीनंभ्य इतरेषां प्रदीयते ।
   वृत्तानुवाद्यसंसिद्धं तच्च स्याज्जयपत्रकम् ॥

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took their seat, the herald of the court proclaimed that litigants might enter and put forward their complaints. Everything would be done in writing. Nothing would be charged from the party.[1] Although no fee was demanded from the party seeking justice from the king, the party losing a case was invariably fined and thus the cost of administration of justice was recovered to a great extent. The successful party was complimented or honoured by the king or chief justice and was to be put in possession of the matter that he succeeded in proving.[2]

In an undefended or exparte case the fine used to be five per cent, in a contested case it was ten per cent. Ordinarily a successful party had not to pay any thing to the king, rather in some cases, as where he came out victorious from an ordeal he was honoured by the king with presents.[3]

From *Yājñavalkya*[4] and *Viṣṇu*,[5] we learn that though the litigant had not to pay any thing pending the litigation, he had to pay some cost after its termination. He says: "A debtor shall be forced to pay to the king ten in the hundred of the sum proved against him. The creditor having received the sum due must pay five in the hundred towards defraying the charges of judicature."

When the debtor denies the fact of debt altogether and the creditor succeeds in establishing it, the debtor had to pay the amount decreed to the creditor and an equal amount to the king as fine, but if the plaintiff turns out to be a false claimant (i.e. the relationship and the amount of the debt are not proved) he had to pay to the king as fine twice as much an amount claimed by him.[6]

In various texts mention has been made about fines imposed on persons giving false evidence. All such fines went to meet the charges incurred in maintaining the establishment for the administration of justice. It would thus appear that a successful party would be entitled to his costs and that in

1. Trial scene of the *Mṛchhakaṭika*, chap. IX (see Appendix A).
2. *Kātyāyana*, quoted by *Sm. ch.* II, 57.
3. *Viṣṇu*, XIV, 5.
4. *Yājñavalkya*, II, 42.
5. *Viṣṇu*, VI, 20-21.
6. *Yājñavalkya*, II, 11.

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some cases, he would have to pay something to the king. The unsuccessful party would be forced not only to pay the cost of his adversary but also a heavy fine to the king at the rate indicated above.

A debt being admitted by the defendant he must pay five in the hundred (as fine to the king) but if it be denied and, proved, twice as much.[1] But in the case of a rich dishonest debtor the fine may be twenty per cent.

If a creditor sues before the king and fully proves his demand the debtor shall pay as a fine to the king, a tenth part of the sum proved and the plaintiff having received the sum due, shall pay a twentieth part of it towards defraying the charges of judicature. The king should make a *Brāhmaṇa* debtor return the decretal debt to the judgement creditor by conciliatory words, should make other debtors return it according to the usage of the country and compel bad people to satisfy the decree by means of physical pain (i.e. imprisonment).

Fines are either fixed or not fixed. They are variable. They range from a Kakni to the confiscation of all wealth. Fixed fines were of three kinds, viz. *Prathama sāhasa* (first amercement), *Madhyama sāhasa* (middle amercement) and *Uttama sāhasa* (highest amercement). The first amercement, according to *Śaṁkhalikhita*, is the fine from 24 *paṇas*[2] to 91, the middlemost is from 200 to 500 *paṇas* and the highest is from 600 to 1000.[3] Fines were of the following degrees according to *Manu*:[4]

(1) Maximum fine was of 1000 *paṇas*,
(2) The middlemost was 500 *paṇas*, and
(3) The lowest amount was of 250 *paṇas*.

1. *Manu*, VIII, 139
   ऋणे देये प्रतिज्ञाते पंचकं शतमर्हति ।
   अपह्नवे ताद्विगुणं तन्मनोरनुशासनम् ॥
2. A *paṇa* was a *karṣa* of copper weighing 80 *Ratis*. cf. *Manu*, VIII, 136.
3. *Śaṁkhalikhita* quoted by *Vivādaratnākara*, p. 664
   चतुर्विंशतिरेक नवतिः प्रथम साहसः ।
   द्विशतं पञ्चशतं चैव मध्यमसाहसः ।
   षट्शतं सहस्त्रं चोत्तमः ॥
4. *Manu*, VIII, 138
   पणानां द्वे शते सार्धे प्रथमः साहसः स्मृतः ।
   मध्यमः पंच विज्ञेयः सहस्त्रं त्वैव चोत्तमः ॥

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For the above three categories, *Yājñavalkya* puts these respectively at 1080, 540 and 270.[1]

The *Mitākṣharā* explains that the lesser figure of *Manu* represents the fines to be awarded for offences committed without set purpose. According to Nārada 100 *paṇas* is the lowest limit of fines for the lowest kind of *sāhasa*, 500 is the lowest for middling *sāhasa*, 1000 is the lowest fine in what is called the highest amercement and might include death penalty, forfeiture of all property, banishment, branding and cutting off of a limb.[2] *Kātyāyana* lays down the following rules:[3]

> Whatever figure of fine is prescribed in the *Smṛti* texts for a wrong it is to be paid to the king in *paṇas* or their equivalent.

Kauṭilya prescribes that a jail should be constructed in the capital provided with separate accommodation for men and women kept apart and well guarded at the entrances.[4] *Manu* requires that all jails should be so built as to abut on the royal road where the offenders suffering pain and in bad condition would be seen by all (in order to deter others from committing offences).[5]

Legislation for Money Lending

Litigation regarding money lending happens to be an important item of court everywhere at all times. Law-givers of all

1. *Yājñavalkya*, I, 366.
2. *Nārada, sāhasa*, vv. 7-8.
3. *Kātyāyana*, 490-493

   कल्पितो यस्य यो दण्डस्त्वपराधस्य यत्नतः ।
   पृणानां ग्रहणं तु स्यात्तन्मूल्यं वाथराजनि ॥
   माषपादो वा दण्डो यत्र प्रवर्तितः ।
   अनिर्दिष्टं तु सौवर्णं माषकं तत्र कल्पयेत् ॥
   यत्रोक्तो माषकैर्दण्डो राजतं तत्र निर्दिशेत् ।
   कृष्णलैश्चोक्तमेव स्यादुक्त दण्ड विनिश्चयः ॥
   माषो विंशति भागस्तु ज्ञेयः कार्षापणस्यतु ।

4. *Kauṭilya*, II, 5

   विभक्त स्त्रीपुरुषस्थानम पसारतः सुगुप्तकक्ष्य वन्धनागारं कारयेत् ॥

5. *Manu*, IX, 288

   वन्धनानि च सर्वाणि राजा मार्गे निवेशयेत् ।
   दुःखिता यत्र दृश्येरन्विकृताः पापकारिणः ॥

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nations have always tried to give proper ruling in respect of this particular type of suit.

Contemporary *Hindu* law was very much exhaustive on this aspect. While it gave full justice to the money lenders it was humane in its attitude towards those who took money on loan. *Hindu* law did not allow the creditor to exercise the power of life and death over his debtor as we find in ancient Roman law although it accorded him a great measure of self-help whereby he could recover his money from his debtor.[1] His religion and his naturally tender heart would disincline him to take any extreme measure. He could of course be very severe to his poor debtor for the purpose of realising his dues.

When a creditor receives payment, he must give a receipt for it to the debtor. If he does not give a receipt, although he has been asked for it, he shall lose the remainder of the sum due to him.[2] If though pressed by the debtor, he does not give an acquittance for the sum paid to him by the debtor, that sum shall yield interest to the debtor.[3]

A creditor may recover the money but, by moral persuasion, by law suit, by tactful management, by customary proceeding, by force or compulsion.[4] A creditor who himself recovers his money from his debtor must not be blamed by the king for recovering what is his own.[5] Two, three, four or five (in the

1. The *Romans* adopted a procedure called *Manus Injecto*, essentially a procedure in execution for realisation of debts by the creditors. The creditor by an act of pure self-help could apprehend the debtor to enforce payment. He could carry him home and put him in chains weighing 15 pounds. If within 60 days no settlement was made, the debtor was produced on three consecutive market days to give him a chance of being ransomed by some generous citizen. If in the meantime no payment or compromise was made, the debtor, by magisterial decree, was awarded to his creditor as his slave. He could be sent over *Tibre* and sold as a slave or put to death by his creditor or creditors. The procedure could be adopted only where the debt was admitted or allowed by a decree passed by a competent authority—cf. Muir Head—*Roman Law*, pp. 190-197.
2. *Nārada*, I, 114.
3. Ibid., 115.
4. *Manu*, VIII, 49
   धर्मेण व्यवहारेण लेनाचरितेन च ।
   प्रयुक्तं साधयेदर्थं पञ्चमेन बलेन च ॥
5. Ibid., 50.

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hundred) is the legitimate rate of interest. Let him take as much in the shape of interest, every month, in the direct order of the four castes.[1] The general rule for interest as according to *Nārada* is as follows:[2]

Interest is declared fourfold in this law book:
periodical interest,
stipulated interest,
Kāyika interest, and
compound interest.

A periodical interest is which runs in the month and that interest is termed stipulated interest which has been promised by the debtor himself. *Paṇa* paid regularly without diminishing the principal, is termed as *kāyika* interest and interest upon interest is called compound. No interest must ever be raised on loans from friendship, unless there be an agreement to the purpose. Without an agreement even, interest accrues on such loans after the lapse of half a year. A loan made from friendship can never yield any interest, without being reclaimed by the creditor. If the debtor refuses to restore it on demand, it shall yield interest at the rate of five per cent.[3]

A loan shall be restored on demand, if no time has been fixed (for its restoration), or on the expiration of the time (if a definite period has been fixed), or when interest ceases (on becoming equal to the principal). If the father is no longer alive, (the debt must be paid) by his sons.[4]

When a debtor has acknowledged a debt it may be realised from him by the expedients of friendly expostulation and the rest by moral persuasion, by tactful management, by compulsion and by confinement at his house.[5]

When a debtor is caused to pay by the advice of friends or kinsmen by friendly remonstrances, by constant following or by creditor starving himself to death—it is termed moral suasion.[6]

1. *Nārada*, I, 100.
2. Ibid., 102.
3. Ibid., 108-109.
4. *Bṛhaspati*, XI, 47.
5. Ibid., XI, 54.
6. Ibid., XI, 55.

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Of course a creditor would be foolish enough if he would starve himself to death for realising his money. The real interest of the creditor is not to commit suicide but to appeal to the feeling of his *Hindu* debtor who, however poor he might be, would not bear the sight of his creditor remaining fasting at his door and would try his utmost to dismiss him away by paying him off. This is also called *Dharanā*.

The compulsion that may be used by a creditor over his debtor consists in the fact that the former may fetter and conduct the latter to his own house and compel him to pay the debt by beating or other means.[1] There is a customary mode of enforcing payment by confining the wife, son or cattle of the debtor and by watching at his door.[2] A poor debtor may be taken to his own house by the creditor and compelled to do work there such as distilling spirits and the like. But a *Brāhmaṇa* debtor must be made to pay by instalment.[3]

A creditor who tries to recover his loan from the debtor must not be checked by the king both for secular and religious reasons.[4] But by the mode consonant with religion, by legal proceedings, by fraud, by the customary mode and fifthly, by force, a creditor may recover what he has lent.[5]

Kātyāyana gives the following ruling about the treatment of debt, debtors and litigation in respect of loans. By beating or by coercion a creditor may enforce payment from his debtor or by work, by suit in court or by mild remonstrance—first duly deliberating on the method to be followed.[6]

A debtor being under arrest and freely acknowledging the debt may be openly dragged before the public assembly and confined until he pays what is due, according to the immemorial usage of the country.[7] By mild expostulation let a creditor procure payment from a priest but from an evil minded man or an heir by some tactful contrivance.

1. *Bṛhaspati*, XI, 57.
2. Ibid., 58.
3. Ibid., 59.
4. *Nārada*, I, 123.
5. Ibid., I, 122.
6. *Kātyāyana*, Colebrooke Digest, Vol. I, p. 351.
7. Ibid., p. 347.

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Manu ordained that merchants, cultivators of land and artists must be made to pay their debts according to the custom of the country. But a creditor might enforce payment from dishonest debtors by violent means.[1] The creditor may extract payment by labour from a debtor of the military, commercial or service class if he be either equal to himself or labour.[2] If the creditor compels the debtor to do any improper work not stipulated at first, he shall be fined in the first amercement and the debtor shall be released from his demand.[3]

Manu says that even by personal labour, the debtor shall pay what is adjudged if he be of the same class with the creditor or of a lower but a debtor of a higher class must pay it according to his income little by little.[4] *Yājñavalkya* gives the ruling that a creditor may compel a poor debtor of a low class to do work by way of paying his debt but a priest if indigent must be made to pay gradually according to his income or casual gains.[5] Should a debtor be disabled by famine or other calamity of the time from paying the whole debt he shall be only compelled to pay in small sums from time to time according to his ability as he happens to gain property.[6] *Manu* gives milder rules:[7]

> If a debtor admits before the court that he is a debtor, then he has to pay a fine equal to five per cent of the amount decreed, but if he denied the fact of debt altogether, then he has to pay as fine ten per cent.

He prescribes a fine, twice of that amount which the debtor falsely denies or which the creditor falsely claims contains a somewhat different rule.[8] *Yājñavalkya*[9] and *Viṣṇu*[10] prescribe

1. Ibid., p. 352.
2. Ibid., p. 359.
3. Ibid., p. 359.
4. Colebrooke Digest, p. 357.
5. Ibid., p. 358.
6. Ibid., p. 361.
7. *Manu*, VIII, 139.
8. Ibid., VIII, 59.
9. *Yājñavalkya*, II, 93

   लेख्यस्य पृष्ठे भिलिखेद्दत्वा दत्वर्णिको धनम् ।
   धनी वोपगतं दद्यात्स्वहस्तपरिचिह्नितम् ॥
10. *Viṣṇu*, VI, 25-26.

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that when a debtor pays part of a debt, the debtor should write on the back of the document how much he paid or the creditor may hand over to the debtor a writing of receipt signed or written by himself, particularly where the original document is not at hand and when the whole debt is paid or the contract is fully performed the creditor should tear off the document or should execute another document in order to make clear the fact of satisfaction.

According to *Bṛhaspati*, *Kātyāyana* and the digests when loan (recorded in a document) has not been expressly claimed by the creditor able to claim from a debtor who is able to pay off and who is at hand the document loses its validity because a suspicion arises that the debt has been paid off and that a document exempted more than thirty years before which has never been seen (by anybody) nor read out (by the creditor to anybody) does not attain validity even though the witnesses on it are living. *Nārada* is very similar to this last.[1]

Kātyāyana prescribes that if no objection is raised for twenty years as regards a patent fault in a document of debt or pledge or of the settlement of boundaries, then the document ceases to be voidable.[2] He and *Bṛhaspati* require that the latent defects in documents or witnesses must be declared (pointed out) by the disputant at the proper time (i.e. when they are produced), while patent defects may be considered by the *Sabhyās* at the time (of the consideration of the evidence) by reference to the rules of the *Śāstras*.[3]

Bṛhaspati, while commenting on this act of self-help on the part of the creditor, says:[4]

> This rule concerns an acknowledged debt. But a debtor disputing his liability and claiming judicial investigation into the matter shall not be subjected to any restraint by the creditor.

A debtor who makes a declaration in this form, 'what may be found to be justly due, that I will pay', is termed one claim-

1. *Nārada*, IV, 141.
2. *Kātyāyana*, 298-299, 301.
3. Ibid., 275, S.B.E. XXXIII, p. 302, v. 25.
4. *Bṛhaspati*, XI, 62-63.

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ing judicial investigation.[1] When there is a difference of opinion between the two parties regarding the nature of the loan or the number or the like, or the amount of interest, or whether the sum be due or not, it is termed a doubtful case.[2] Should a man, after recovering his debt by moral suasion or one of the other modes, fail to receipt it on the bond or to give a deed of acquittance, it shall yield interest (to the debtor).

About the recovery of debts by judicial aid, the following guidelines and rulings have been given by contemporary law givers:

(1) The creditor could seek the aid of the court in realising his dues. In fact that was the usual mode. The procedure of self-help could be resorted to only by a strong creditor against a weak debtor. Besides a good-natured and kind-hearted creditor would feel delinquency in himself moving against his debtor and would gladly leave him to the severity of the law.

(2) When a creditor sues for the money due to him, and the debt is proved, let the king make the debtor pay the sum to which the creditor is entitled.

(3) This shows that a decree obtained could be executed and the court would see that the decree holder got necessary reliefs.

(4) A *Kshatriya*, a *Vaiśya*, and a *Śūdra* who are unable to pay a fine, shall discharge it by labour; a *Brāhmaṇa* shall pay it by instalments.[3] If he be unable to work the debtor should be sent to jail except when he is a *Brāhmaṇa*.

If a *Brāhmaṇa* debtor was unable to pay, nothing could be done for recovery of the decretal debt except taking a surety from him if any one cared to be one. As regards women also *Kātyāyana* laid down certain prudent rules.[4] Women who are not independent should not be arrested; it is the male who

1. *Bṛhaspati*, VI, 4.
2. Ibid., VI, 5.
3. *Manu*, VIII, 229.
4. *Kātyāyana* quoted by *Sm. ch.*, II, p. 323

   ना स्वतन्त्राः स्त्रियो ग्राह्या पुमोस्तन्नापराध्यति ।
   प्रभूणा शासननीयास्ता राजा तु पुरुषं नयेत् ॥
   प्रोषितस्वामिका नारी प्रापिता यद्यपि ग्रहे ।
   तावत्सा बन्धने स्थाप्या यावप्रत्यागतः ॥

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should be regarded as the offender, women should be punished by their lord (i.e. the person on whom they depend) but the king should take away for punishment the male offender. Even if a woman whose husband has gone abroad be consigned to jail she should be kept imprisoned only till he returns.

(5) A poor debtor who is unable to pay his debt on account of a reverse of fortune, may pay gradually just as his means allow.[1]

(6) A wealthy debtor wilfully neglecting to pay his debt is to be compelled by the king by forcible means to pay his debt and also a fine at the rate of five per cent.[2]

Decree holders had the choice of claiming the restoration of their debt by any of the following modes:

(1) By fines.
(2) By compelling him to serve the decree holder.
(3) By force and compulsion.
(4) By confining the wife, son or cattle of the debtor.
(5) By forcing him to servitude.
(6) By enabling the debtor to pay his debt by instalment.
(7) By sale of the property of the debtor.
(8) By asking the debtor to offer securities for the debt.
(9) By having sureties in the place of the original debtors.
(10) By a new contract superseding the old one.
(11) By his arrest and imprisonment.
(12) By sale of the property of the debtor.

Liability of Legal Heir, Sureties and Pledges

About the liability of the legal heir of a debtor the verdicts of *Bṛhaspati* are noteworthy. *Hindu* law makes it a pious duty on the part of the son to pay the debt of his father. On the death of the father his debts must be paid by his sons.[3]

A man must pay his paternal grandfather's debt first of all and then that of his father and lastly his own debt.[4] A man must pay his father's debt as if it were his own, his grandfather's debt without interest but he need not pay at all his

1. *Nārada*, 131.
2. Ibid., 132.
3. *Bṛhaspati*. XI, 47.
4. Ibid., 48.

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great grandfather's debt.[1] *Nārada* also supports this view of *Bṛhaspati*.[2]

Some are not liable to pay the debts of their father incurred for spirituous liquor, gambling, idle gifts, promises made under the influence of love or wrath or for suretyship nor the balance of fine or toll.[3] This finds support of *Nārada* also.[4] The successor to the estate of the deceased is to pay his debt when he is involved in calamity and where there is no such successor the taker of the widow is to pay the debt.[5]

The head of the family is to pay the debt which is incurred for the benefit of the household, by an uncle, brother, son, wife, slave, pupil or any other dependent.[6] Distillers of spirituous liquor, hunters, washermen, herdsmen, barbers and the like are liable for the debts incurred by their wives.[7] *Nārada*[8] and *Viṣṇu*[9] have also supported this view of *Bṛhaspati*.

Manu holds a slightly different view about the liability of legal heirs towards the clearance of debt of their kinsmen and their relatives whom they succeed after their death:

(1) A son is liable to pay his father's debt if it be incurred by the latter as a surety or idly promised or lost at play or incurred for spirituous liquor or if it be the balance of a fine and a tax or duty.[10]

(2) If the debtor be dead and the debt was incurred for the benefit of the family it must be paid by the relatives out of their own estate even if they are afterwards divided.[11]

1. *Bṛhaspati*, XI, 49.
2. *Nārada*, I, 4.
3. *Bṛhaspati*, XI, 51.
4. *Nārada*, I, 10.
5. *Bṛhaspati*, XI, 52.
6. Ibid., XI, 50.
7. Ibid., 53.
8. *Nārada*, I, 19.
9. *Viṣṇu*, VI, 37.
10. *Manu*, VIII, 159

    प्रातिभाव्यं वृथादानमाक्षिकं सौरिकं च यत्।
    दण्डशुल्कावशेषं च न पुत्रो दातुमर्हति ॥

11. Ibid., VIII, 156

    चक्रवृद्धिं समारूढो देशकालव्यवस्थितः।।
    अतिक्रामन्देशकालौ न सत्फलमवाप्नुयात्।

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Nārada also holds this view.[1]

Surety was a guarantee for the creditor. It was defined by *Mitāksharā* as a contract with another person with the object of creating confidence.[2] The contract of suretyship should be defined in the following manner—a contract of suretyship was a contract whereby a man bound himself to be personally answerable for the obligation of another, as an accessory debtor, in addition to the person principally liable.

Nārada states:[3] The guarantee to be offered to a creditor may be twofold—a surety and a pledge. Certain other sources of law recognised other guarantees of the creditor as well viz. the contract of copartners whereby a man or men bound themselves to be personally answerable for the obligation of another, as a solitary debtor, sahagrahins etc. Suretyship and pledge, however, were the most typical cases of guarantees offered to a creditor.

In the *Sanskrit* texts it is called *pratibhu* (representative) and sometimes *lagnaka* (bail). We find in *Smṛtis* (like *Kātyāyana*, *Hārita* and others) the description of ten kinds of suretyship i.e. surety for appearance, for honesty, for payment, for delivering the assets of the debtor, in litigation, for ordeal, for safety, for delivering a pledge, for a written document and for work.[4]

Surety for payment was called in the *Sanskrit* texts *dāna* (from dā—repay, repayment, payment). It was mentioned in *Yājñavalkya*,[5] *Viṣṇu*[6] and *Nārada*[7] as one of three, in *Bṛhaspati*[8] as one of four and in *Kātyāyana*[9] as well as in *Hārita Smṛti*[10] as

1. *Nārada*, I, 13.
2. *Mitāksharā* on *Yājñavalkya*, II, 53.
3. *Nārada*, I, 117.
4. *Kātyāyana*, 175.
5. *Yājñavalkya*, II, 53
   दर्शने प्रत्यये दाने प्रातिभाव्यं विधीयते ।
   आधौ तु वितथे दाप्यावितरस्य सुता अपि ।।
6. *Viṣṇu*, VI, 41.
7. *Nārada*, I, 118.
8. *Bṛhaspati*, X, 73.
9. *Kātyāyana*, 530.
10. *Hārita Smṛti*, p.3 46.

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one of the five kinds of sureties.[1] It was a contract whereby a man bound himself to be personally answerable for the debt of another.

About the liabilities of sureties, *Bṛhaspati* says:[2]

Sureties have been ordained by the sages for four different purposes namely—

(1) For appearance (*darśana*),
(2) For confidence (*pratyaya*),
(3) For payment (*dāna*), and
(4) For delivering the assets of the debtor.

The first says—'I will produce (that man)', the second says—'He is a respectable man', the third says—'I will pay the debt' and the fourth says—'I will deliver his assets'. On the other hand, *Nārada* mentions three types of sureties namely:[3]

(1) For appearance,
(2) For payment, and
(3) For honesty.

If the debtors fail in their engagements the two first (sureties themselves, but not their sons) must pay the sum lent at the appointed time both the two last (sureties), and in default of them their sons (are liable for the debt), when the debtors break their promise (to pay the debt). The creditor should allow time—a fortnight, a month, a month and a half according to circumstances for the surety to search for a debtor who has absconded.[4]

Sureties should not be too much harassed. They should be allowed to pay the debt by instalments and should not be disturbed when the debtor is present.[5] When a surety is compelled to pay the debt, he is entitled to recover double the amount from the debtor after the lapse of a month and a half.[6] *Viṣṇu* is also of the same opinion.[7] If the debtors fail to discharge the debt or if they prove dishonest, the surety (for

1. *Manu*, VIII, 160; *Gautama*, XII, 41, *Vaśiṣtha*, XVI, 31.
2. *Bṛhaspati*, XI, 31.
3. *Nārada*, I, 118.
4. *Bṛhaspati*, XI, 42.
5. Ibid., 43.
6. Ibid., 44.
7. *Viṣṇu*, VI, 43.

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payment and for honesty) must pay the debt, and so must the surety (for appearance) if he fails to produce the debtor.[1]

About the liabilities of sureties Manu says:[2] "The man who stands a surety for the appearance of a debtor and does not produce him, is to pay the debt out of his own property. His heir is not liable." On this point, *Nārada* holds the following view:

(1) A father is not liable to pay the debt of his son but the son is held liable for the debt of his father unless it is contracted from love, anger, for spirituous liquor, games or bailments.[3]

(2) The father is liable if the son contracts the debt by his father's order or for the maintenance of the family or in a precarious situation.[4]

(3) The head of the household is liable to pay the debt incurred for the household by a pupil, apprentice, slave, woman, menial or agent.[5]

(4) When the debtor is dead, and the expense has been incurred for the benefit of the family, the debt must be repaid by his relations even though they be separated from him.[6]

(5) The father, uncle or eldest brother having gone abroad the son, nephew or the younger brother respectively is not bound to pay his debt before the lapse of 20 years.[7]

(6) On the death of two coparceners, the son of the one is not bound to pay the debt of the other coparcener.[8]

(7) The wife is not liable for the debt of her husband or of her son unless it had been promised by her or contracted along with her husband.[9]

The rule is that the debt is to be paid by the person who inherits the estate of the deceased for the liability to pay debts is incompatible with the right to succession.[10] A debt contract-

1. *Nārada*, I, 119.
2. *Manu*, VIII, 158, 160.
3. *Nārada*, I, 10.
4. Ibid., I, 11.
5. Ibid., I, 12.
6. Ibid., I, 13.
7. Ibid., I, 14.
8. Ibid., I, 15.
9. Ibid., I, 16.
10. Ibid., I, 17.

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ed by the wife shall never bind the husband, unless it had been contracted at a time when the husband was in distress. Household expenses are indispensably necessary. The wives of washermen, huntsmen, cowherds and distillers of spirituous liquor are exempted from this rule. The income of these men depends on their wives and the household expenses have also to be defrayed by the wives.[1] If a woman who has a son forsakes her son and goes to live with another man, that man shall take her separate property. If she has no property of her own, her son shall take the property of her husband. If, however, a woman repairs to another man carrying her riches and offspring with her, that man must pay the debt contracted by her husband or he must abandon her.[2]

Among these three, the heir of the wealth, the protector of the widow and the son, he is liable for the debts, who takes the wealth. The son is liable, on failure of a protector of the widow and of an heir; the protector of the widow, on failure of an heir and of a son.[3] Debts contracted by the husbands of the last *Svariṇi* and of the first *Punaibhu*, must be paid by him who lives with them.[4] A wife, a daughter-in-law, a woman entitled to maintenance and the attendants of the wife, by these have debts to be paid, as also by one who lives on the produce of land (inherited from the debtor).[5]

He who has intercourse with the wife of a dead man who has neither wealth nor a son shall have to pay the debt of her husband because she is considered as his property.[6] *Viṣṇu* has also supported this.[7]

So far as the liability of the sureties is concerned this law giver gives the following ruling:

(1) If the debtors fail to pay the debt or turn out dishonest the surety (for payment and for honesty) is liable

1. *Nārada*, I, 18-19.
2. Ibid., I, 21.
3. Ibid., I, 23.
4. Ibid., I, 24.
5. Ibid, I, 25.
6. Ibid., I, 22.
7. *Viṣṇu*, VI, 30.

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for the debt. If the surety fails to produce the debtor he is likewise liable.[1]

(2) Where there are several sureties jointly liable each is liable proportionately but if they are severally liable each is liable to pay the whole debt at the option of the creditor.[2] *Viṣṇu* holds almost the same view.[3]

(3) When there are several sureties (jointly bound), they shall pay their proportionate shares of the debt; but when they are bound severally, the payment shall be made (by any of them), as the creditor pleases.

Viṣṇu holds almost the same view as maintained by the law givers though differing very slightly:

(1) If the debtor dies or becomes a religious ascetic or remains abroad for 20 years the debt shall be discharged by his sons or grandsons but not by remoter descendants against their will.[4]

(2) He who takes the assets of a man whether leaving or not leaving a male issue must pay his debts.[5]

Like the surety, a pledge is a guarantee to be offered to a creditor. In *Sanskrit* it is called *ādhi*. *Bṛhaspati* also says that the pledge is termed as '*bandha*' or *bandhaka*.[6] Pledges were enumerated in the sources of ancient Indian law among the first titles of law i.e. recovery of debt. From the legal point of view pledges were declared to be of several sorts. According to Bṛhaspati, pledges are of eight types:[7]

(1) Movable (Jaṅgama),
(2) Immovable (Sthavara),
(3) To be kept (Gopyā),
(4) To be used (Bhogyā),
(5) With no time limit (Yadrcchika),
(6) With a time limit (Savdhi),

1. *Nārada*, I, 119.
2. *Viṣṇu*, VI, 42.
3. Ibid.
4. *Viṣṇu*, VI, 27-28.
5. Ibid., 29.
6. *Bṛhaspati*, X, 38.
7. Ibid., 39.

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(7) Stipulated in writing (Lekhyarudha), and
(8) Stipulated before witness (Sakshimana).

The first six categories related to the division of pledges from the legal point of view and the last two from the formal point of view i.e. the manner in which the contract of pledge was concluded.

Nārada divides pledges into the following four categories:[1]
(1) With a time limit (Krtakalopaneya),
(2) Without a time limit (Yavaddeyodyata),
(3) To be kept only (Gopyā),
(4) To be used (Bhogyā).

Yājñavalkya also divided pledges into four classes.[2] *Gautama* mentioned only loans secured by a pledge to be used and *adhibhogah*.[3] *Viṣṇu* did not make any division of pledges. It is, however, evident from the text that a distinction between pledges existed i.e. between pledges to be kept and pledges to be used, pledges unlimited as to time and pledges limited as to time, as well as immovable and movable pledges. *Manu* did not mention any distinction between pledges;[4] it mentioned only pledges to be used. *Kātyāyana* mentioned pledges to be used and called them *bhogyadhi*; it divided this kind of pledges into *jaṅgama* (movable) and sthavara (immovable).[5] In 518 *Kātyāyana* additionally divided pledges into documentary pledges (*lekhyākṛta*) and those made before witnesses (*sākshyakṛta*). In 519 and 520 it introduced another distinction unknown to other *Smṛtis* viz. *anirdiṣṭa* and *nirdiṣṭa* pledges i.e. pledges which were not specified (did not exist) and specified (which existed at the time of making a pledge). It can be assumed that these last two pledges determined or described only pledges when a document was drawn up (*lekhyākṛta*).

Appropriation of Recoveries from Debtors

A debtor shall be forced to pay his creditors in the order

1. *Nārada*, I, 124.
2. *Yājñavalkya*, II, 58, 59, 61.
3. *Gautama*, XII, 32, 35.
4. *Manu*, VIII, 143
   न त्वेवाधौ सोपकारे कौसीदीं वृद्धिमाप्नुयात् ।
   न चार्थे: कालसंरोधान्निसर्गोऽस्ति न विक्रय: ॥
5. *Kātyāyana*, 516.

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in which the debts were contracted, after first discharging those of a priest or of the king.[1] If there be many debts at once, that which was first contracted shall be paid after those of a king or of a priest learned in the *veda*.[2] If all the contracts were written in one day, the debts, payment, subsisting demand and interest shall be equal, otherwise in order of time.[3]

That capital on which it is proved that the assets were gained and no other debt, must be repaid by the debtor out of those assets.[4] When one field has been simultaneously mortgaged by two creditors, it shall belong to that mortgagee who has first secured possession of it.[5] But if both have possessed it for an equal time it shall be their joint property. The same rule is ordained in the case of a gift or a sale.[6] If the same property be sold, mortgaged and given away at the time, it shall be divided among three parties in proportionate shares, the two first getting in the ratio of their respective claims and the third the residue.[7]

Punishment

Administration of justice was then equitable. *Manu* used the power of discrimination too far. If it is the first crime of the offender he could be let off with a warning to behave properly in future. If the same offender commits a second criminal act, he must be censured and let go. Fines will be imposed for a third offence. Even then if he continues to commit offence in any manner, nothing but corporal punishment is suitable. But those who wrong a second time and that knowingly, are liable to punishment.[8]

The punishments for offences were fines, reprimand, torture, imprisonment, sentence of death and banishment. The last was invariably for members of the *Brāhmaṇa* community.[9]

1. Colebrooke Digest, I, p. 383.
2. Ibid., 384.
3. Ibid., 385.
4. Ibid., 387.
5. *Bṛhaspati*, XI, 34.
6. Ibid., 35.
7. Colebrooke Digest, I, pp. 36-37.
8. *Manu*, VIII, 128-129.
9. Ibid., VIII, 379-381.

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Reprimand was for minor crimes. The imposition of fines was by no means at fixed rates. *Yājñavalkya* recommends 80,000, 40,000 and 20,000 *paṇas* for *uttama*, *madhyama* and *adhama sāhasa*.[1]

The *Smṛtis* were quite aware of the several purposes served by punishments for crimes though they do not develop a regular science of penology. *Yājñavalkya*[2] and *Nārada*[3] state that when a person without complaining to the king sets to secure what is denied by the opposite side or is doubtful he becomes liable to punishment and he also cannot secure the object he wants. Punishment of the evil-doer serves as an example and a warning to all others that might be tempted to tread the paths of violence and crime. It rules over all people, it protects all of them, *daṇḍa* is awake even when (the guardians of law) have gone to sleep, the wise regard *daṇḍa* as *dharma*.[4]

Gautama derives the word *danda* from the root *dam*—to restrain or to deter. So the most important purpose of punishment is deterrent. The conception of *daṇḍa* is therefore thus that the state's will and coercive power keep the individual and nation within the bounds of *dharma*, punish for breaches and effect the good of the whole. *Daṇḍa* should be neither too severe not too mild but should be appropriate to the fault committed. The end sought to be served by punishment was the protection of society and the securing of the happiness.

Another purpose of punishment is preventive i.e. if a culprit is imprisoned for an offence he is prevented or disabled from repeating the same offence or committing further offences for some time at least and if he be sentenced to death or transported for life or banished, the commission of offences by him is prevented for his life time. The punishment was deemed to be a sort of expiation, which purged the man of sinful promptings

1. *Manu*, VIII, 138.
2. *Yājñavalkya*, II, 16
   संदिग्धार्थं स्वतन्त्रो यः साधयेद्यश्च निष्पतेत् ।
   न चाहूतो वदेत्किंचिद्धीनो दण्डयश्च स स्मृतः ॥
3. *Nārada*, I, 46
   अनावेद्य तु यो राज्ञे सन्दिग्धेऽर्थे प्रवर्तते ।
   प्रसह्य स विनेयः स्यात्स चास्यार्थो न सिद्धयति ॥
4. *Manu*, VII, 18.

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and reformed his character. *Manu* says that men who are guilty of crimes and have been punished by the king go to heaven, becoming pure like those who perform meritorious deeds.

We know four types of punishment i.e. by gentle admonition, by severe reproof, by fine and by corporal punishment.[1] The law givers declare that these punishments may be inflicted separately or together according to the nature of the offence.[2] The first takes the form of saying—"You have not done a proper thing", the second 'fie upon you who are a wrong doer and guilty of *adharma*'. *Bṛhaspati* lays down that preceptors, *purohitas* and sons should be sentenced to the punishment of wordy admonition, other persons who engage in disputes should be punished with reproof or fines and those guilty of *mahāpātakas* should be punished with corporal punishment. *Bṛhaspati* says that the first two are within the privilege of the *Brāhmaṇas* (appointed as chief justice) but fines and corporal punishment are to be inflicted by the king (on the recommendation of the chief justice).[3]

The *Smṛtis* lay down the award of punishment must be regulated by a consideration of the motive and nature of the offence, the time and place, the strength, age, conduct (or duties), learning and monetary position of the offenders and by the fact whether the offence is repeated.[4] The severity of punishment depended on caste also. The punishments for a

1. *Manu*, VIII, 129; cf. *Yājñavalkya*, I, 367.
2. *Daṇḍaviveka*, p. 20

   न त्वयेदं सम्यक कि कृतमिति निन्दा ।
   धिक् त्वां पापीयों समधर्मकारिणमिति निर्भर्त्सनम् ।।

   cf. *Bṛhaspati* quoted by *Sm. ch.*, II, p. 126

   गुरुन्पुरोहितान्पुत्रान्वागदण्डेनैव दण्डयेत् ।
   विवादिनो नरांश्चान्यान्धिगधनाभ्यांच दण्डयेत् ।
   महापातकयुक्तांश्च वधदण्डेन दण्डयेत् ।।

3. SBE XXXIII, p. 388, v. 8.
4. *Kauṭilya*, IV, 10

   पुरुषं चापराधं च कारणं गुरुलाघवम् ।
   अनुबंधं तदात्वं च देशकालौ समीक्ष्ये च ।।
   उत्तमा वरमध्यत्वं प्रदेष्टा दण्डकर्मणि ।
   राज्ञश्च प्रकृतीनां च कल्पयदन्तरान्वितः ।।

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Brāhmaṇa offender, according to *Gautama*,[1] were preventing him from doing the same thing again, depriving him of all wealth, taking sureties from him, proclaiming him as a thief in the city, banishment, putting on his forehead the mark indicative of his crime. *Āpastaṁba* lays down that a *Brāhmaṇa*, guilty of murder, theft, forcible seizure of another's land was to have his eyes covered over with cloth for the whole of his life (while *Śūdra* guilty of any of them was to receive the death sentence).[2]

The punishments to which offenders were liable under the provisions of ancient *Hindu* law were:

(1) Death under various modes,
(2) Arrest and imprisonment,
(3) Corporal punishment of various degrees,
(4) Banishment,
(5) Forfeiture of property,
(6) Fines,
(7) Harsh reproofs,
(8) Gentle admonitions,
(9) Penances of various kinds.

Death under various modes

The death sentence was carried out in various ways such as by giving poison or by trampling at the feet of an elephant, or by a sharp weapon (like a sword), by being burnt or drowned.[3] Simple death is prescribed by *Manu* for those who abet

cf. *Vaśiṣtha*, XIX, 9
दण्डस्तु देशकालधर्मवयोविद्यास्थानदिशेषैर्हिंसा क्रोशयोः कल्पर्यः ।
cf. *Gautama*, XII, 48-49
पुरुषंशक्तयपराधान् बंध विज्ञानाद्दण्डनियोगः ।
अनुज्ञानं वा वेदवित्समवायवचनात् ।।
cf. *Manu*, VIII, 126
अनुबन्धं परिज्ञाय देशकालौच तत्वतः ।
सारापराधौ चालोक्य दण्डं दण्डयेषु पातयेत् ।।

1. *Gautama*, XII, 44
2. *Āpastaṁba*, II, 10, 27, 16-17.
पुरुषवधेस्तेये भूम्यादान इति स्वान्यादाय वध्यः चक्षुर्निरोधस्त्वेतेषु ब्राह्मणाम् ।।
3. *Mānasollāsa*, II, 20, v. 1287. p. 149
विषेक्ष्वु दन्तिभुजगशस्त्रानलजलादिभिः ।
पापानां प्राणहरणं वधदण्डः प्रकीर्तितः ।।

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thieves by giving them subsistence, instruments of house-breaking or asylum. If a man of low caste had sexual intercourse with a woman of a higher caste (with or without her consent) or kidnapped a maiden he was to be sentenced to death.[1] A man who made a breach in the embankment of a lake may be sentenced to death by drowning[2] or a woman who was extremely wicked or who murdered a man or who destroyed the embankment of a tank may have a stone tied round her neck and be drowned, provided she be not pregnant at the time of the sentence.[3] *Yājñavalkya* prescribes death by being gored by the horns of bulls for a woman who is guilty of poisoning or who is guilty of incendiarism or who kills her husband, elders or her own child.[4] He further prescribes death by being burnt with the fire of straw for those who set fire to growing crops, houses, forests, village pastures and threshing floors or who approach the queen.[5] *Nārada* states that one who strikes with weapon the king, even though the latter be at fault, should be roasted in fire.[6] Cutting of limbs as punishment was common in the case of thieves, pickpockets and cutpurses.[7]

The law givers prescribe that a *Brāhmaṇa* was not to be sentenced to death or corporal punishment for any offences deserving the death penalty, he was to be punished by ordering his entire head to be shaved, he might be banished from the country, a mark appropriate to the grave sin committed by him, might be paraded on an ass.[8] *Manu* prescribes the shav-

1. *Manu*, IX, 271, VIII, 366; *Yājñavalkya*, II, 286-288, 294.
2. Ibid., IX, 279.
3. *Yājñavalkya*, II, 278.
4. Ibid., II, 279.
5. Ibid., II, 202.
6. *Nārada*, *Pāruṣya*, v. 31.
7. *Manu*, IX, 276-277
   संधिं छित्वा तु ये चौर्यं रात्रौकुर्वन्ति तस्कराः ।
   तेषां छित्वा नृपो हस्तौ तीक्ष्णे शूले निवेशयेत् ॥
   अङ्गुलीर्ग्रन्थिभेदस्य छेदयेत्प्रथमे ग्रहे ।
   द्वितीये हस्तचरणौ तृतीये वधमर्हति ॥
8. *Gautama*, XII, 43; *Kauṭilya*, IV, 8; *Manu*, VIII, 125, 380-381; cf. *Yājñavalkya*, II, 270; *Viṣṇu*, V, 1-8; *Bṛhaspati* quoted in SBE XXXIII, p. 388, v. 11. cf. *Nārada*, *Sāhasa*, 9-10
   वधादृते ब्राह्मणस्य न वधं ब्राह्मणोर्हति ।
   शिरसो मुण्डनं दण्डस्तस्य निर्वासनंपुरात् ।
   ललाटे चाभिशस्ताङ्क प्रमाणं गर्दभेन च ॥

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ing of the head as a punishment for a woman who pollutes a maiden.[1] *Nārada* prescribes it for a *Brāhmaṇa* who is not sentenced to death on account of his caste.

Kātyāyana says:[2]

> Even a *Brāhmaṇa* deserves to be killed if he be guilty of causing abortion, if he be a thief (of gold) or if he kills a *Brāhmaṇa* woman with a sharp weapon or if he kills a chaste woman.

The sentence of death was, according to *Kāmandaka*[3] and *Śukra*,[4] to be avoided even in the gravest offences except for the offence of subverting the state.

Viṣṇu provides that all persons except *Brāhmaṇa* guilty of the *Mahāpātaka* may be sentenced to death.[5] But Manu says that this extreme penalty was to be awarded only if they performed no *prāyaśchita*.[6] *Kauṭilya* prescribes death sentence for causing the death of any one with a sharp weapon.[7] Excision of the tongue was the sentence when a *Śūdra* abused a *Brāhmaṇa* or a *Kshatriya* by falsely charging him with some grave sin.

The punishment of death was inflicted in the following ways:

(1) By being drowned in water.[8]

1. *Manu*, VIII, 370
   या तु कन्यां प्रकुर्यात्स्त्री सा ह्यौ मोण्डयमर्हति ।
   अंगुल्योरैव वा छेदं खरणौद्वहनं तथा ।।
2. *Kātyāyana*, 806.
3. *Kāmandaka*, XIV, 16
   महत्स्वप्यपराधेषु दण्डं प्राणान्तिकं त्यजेत् ।
   ऋते राज्यापहारात्तु युक्त दण्डः प्रशस्यति ।।
4. *Śukra*, IV, I, 93
   अवरोधाद् बन्धनेन ताडनेन च कर्षयेत् ।
   लोभान्न कर्षयेद्राजा धनं दण्डेन वै प्रजाम् ।।
5. *Viṣṇu*, V, 1.
6. *Manu*, IX, 236
   चतुर्णामपि चैतेषां प्रायश्चित्तमकुर्वताम् ।
   शारीरं धनसंयुक्तं दण्डं धर्म्य प्रकल्पयेत ।।
7. *Kauṭilya*, IV, 11.
8. *Manu*, IX, 279
   तडागमेदकं हन्यादप्सु शुद्धवधेन वा ।
   पद्मापि प्रतिसंस्कुर्याद्दाप्यस्तूत्तमसाहसम् ।।

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(2) By being devoured by dogs in a frequented place.[1]
(3) By being burnt on a red-hot iron bed, logs being put under it until the offender is burnt to death.[2]
(4) By being slain by an elephant.[3]
(5) By being impaled on a pointed stake.[4]
(6) By being cut to pieces by razors.[5]
(7) By extending himself on a heated iron bed, or embracing the red hot image of a woman.[6]
(8) By being himself cut off his organ and his testicle and having taken them in his joined hands, the offender is to walk straight towards the south-east until be falls down dead.[7]

Banishment

Banishment is to be distinguished from transportation. There was no fixed abode for the offender. He was required by the king to leave his kingdom and to shift for himself outside the realm.

Manu provides that punishment may fall upon any one (or more) of ten places in the case of the three lower castes, viz. the private parts, the belly, the tongue (either whole or half),

1. *Manu*, VIII, 371
भर्तारं लङ्घयेद्या तु स्त्री ज्ञातिगुणदर्पिता ।
तां भिः खादयेद्राजा संस्थाने बहुसंस्थिते ॥
2. Ibid., 372
पुमांस दाहयेत्पापं शयने तप्त आयसे ।
अभ्यादध्युश्च काष्ठानि तत्र दह्येत पापकृत् ॥
3. Ibid., VIII, 34
प्रणष्टाधिगतं द्रव्यं तिष्ठेद्यु कैरधिष्ठितम् ।
यांस्तत्र चौरान्गह्मीयात्तान्राजेमेन घातयेत् ॥
4 Ibid., IX, 276.
5. Ibid., IX, 292
सर्वकण्टकपापिष्ठं हेमकारं तु पार्थिव ।
प्रवर्तमानमन्याये छेदयेल्लवशः क्षुरैः ॥
6. Ibid., XI, 104
स्वय वा शिश्नवृषणावुत्कृत्याधाय चाञ्जलौ ।
नैर्ऋतीं दिशमातिष्ठेदानिपाताद जिह्मगः ॥
7. Ibid., XI, 105
खट्वाङ्गी चीरवासा वा श्मश्रुलो विजने वने ।
प्राजापत्यं चरेत्कृच्छ्रमब्दमेकं समाहितः ॥

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the hands, the feet, the eyes, the nose, the ears, wealth and the whole body, but a *Brāhmaṇa* shall depart unhurt from the country i.e. he is to be only banished.[1]

The punishment of banishment was prescribed for a *Brāhmaṇa* guilty of the gravest offences meriting death sentence.[2] Banishment is also prescribed by *Yājñavalkya*[3] for taking bribes for a perjured *Brāhmaṇa* witness,[4] for one who embezzles the money of a corporation or transgresses the convictions agreed upon by a guild or village, for playing with false dice,[5] for a *Brāhmaṇa* guilty of very heinous crimes.[6] *Śukra* contains a long list of offenders that deserve to be sentenced to banishment.[7]

Arrest and Imprisonment

Arrests were of the following kinds:[8]

(a) local arrest,

(b) prohibition from travelling, and

(c) arrest relating to karman.

One arrested while crossing a river, or in a forest, or in a bad country or in a great distress, or in like situations is not punishable for breaking his arrest.

Corporal Punishment

Corporal punishment assumes various froms according as it is meant to cause only harassment (pain) or is carried out by cutting off or destroying a limb or to cause death.[9] Harassment or pain may be inflicted by imprisonment, beating, putting fetters, by making ridiculous (by the complete shaving of the head), declaring the offence by beat of drum in the presence

1. *Manu*, VIII, 125
   उपस्थमुदरे जिह्वा हस्तौ पादौ च पञ्चमम् ।
   चक्षुर्नासा च कर्णौ च धनं देहस्तथैव च ।।
2. *Gautama*, XII, 44; *Manu*, IX, 241; *Viṣṇu*, V, 3, *Baudhāyana*, I, 10-19.
3. *Yājñavalkya*, I, 339.
4. *Yājñavalkya*, II, 81.
5. *Manu*, VIII, 219; *Viṣṇu*, V, 167-168; *Yājñavalkya* II, 202.
6. *Śānti*, 14, 116
   महासाहसिकं विप्रं कृताङ्कं विप्रवासयेत् ।
7. *Śukra*, IV, I, 98-108.
8. *Nārada*, I, 48.
9. Ibid., 49.

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of the convict, parading him through the streets on an ass and marking him with signs indicative of offences like theft.

Yama quoted by *Smṛtichandrikā*, while providing that a *Brāhmaṇa* was to be free from undergoing corporal punishment, allows the king to keep a *Brāhmaṇa* offender in confinement in a secret place and give him bare maintenance or the king may make him do the work of guarding cattle for a month or a fortnight or make him perform other work not fit for a decent *Brāhmaṇa*.[1]

The *Smṛti* texts do not prescribe only a money compensation to the person wronged but corporal punishment in the first instance and monetary compensation in addition.[2] *Manu* and *Kātyāyana* prescribe a punishment for causing pain to the body or the loss of a limb and also the expenses of curing the person injured and some solatium to him.[3]

Corporal punishment may be made to fall in the cases of the three lower castes in the following places only:

(1) the organ,
(2) the belly,
(3) the tongue,
(4) the two hands,
(5) the two feet,
(6) the eye,
(7) the nose,
(8) the two ears, likewise the whole body.

1. *Yama* quoted by *Smṛtichandrikā*, II, p. 317
   न शारीरो ब्राह्मणस्य दण्डो भवति कहिंचित् ।
   गुप्ते तु बंधने बद्ध्वा राजा भक्तं प्रदापयेत् ॥
   अथवाप्यधनं रक्षाकर्म वा कारयेन्नृपः ।
   मासार्धमासं कुर्वीत कार्यं विक्षाय तत्त्वतः ॥
   यथापराधं विप्रं तु विकमण्यिपि कारयेत् ।
   अवध्या ब्राह्मण गावो लोकस्मिन्वैदिकी श्रुतिः ॥
2. *Bṛhaspati* quoted by *Viśvarūpa* on *Yājñavalkya*, II, 206
   दण्डस्त्वमिहायैवं दण्डपारुण्यकल्पित ।
   हते तद्द्विगुणं चान्यद्राजदण्ड स्ततोऽधिकः ॥
3. *Manu*, VIII, 287; *Yājñavalkya*, II, 222; *Aparārka*, p. 816; *Kātyāyana*, quoted by *Sm. ch.*, II, p. 329
   देहेन्द्रिय विनाशे तु यथा दण्ड प्रकल्पयेत् ।
   तथा तुष्टिकरं देयं समुत्थानं च पण्डितैः ।
   समुत्थान व्यय चासो दधादावण विरोपजान् ॥

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The king shall inflict punishment with a whip, a cane or a rope and the like on women, children, men of disordered mind, the poor and the sick.[1] A wife, a son, a slave, a pupil and a younger brother, who have committed faults, may be beaten with a rope or a split bamboo on the back part of the body only and not on a noble part.[2] Sometimes the forehead is branded with particular marks.[3] A *Brāhmaṇa* shall depart unhurt from the country.[4]

Forfeiture of Property

Forfeiture of all property was the punishment for several offences such as the commission of the *mahāpātaka* by persons other than *Brāhmaṇas*, provided they committed them unintentionally for perjury, for taking bribes by *Sabhyās*.[5] *Nārada* provides a humane rule that even when the king orders the confiscation of all the property of an offender he should not deprive the offender of the tools of his trade or the tools of his craft, such as arms in the case of a soldier, materials of art in the case of artisans, ornaments of courtesans, musical instruments of musicians.

Fines

As already seen, fines are either fixed or not fixed. They range from a *Kākaṇī* to the confiscation of all wealth. A double fine must be inflicted on the man, who once being convicted is again accused within a year. Repeated intercourse with a *Vrātya* and a *Chāṇḍālī* entails double fine.[6] A twice born man, who is a traveller, and whose provisions are used up, shall not be fined, if he takes two stalks of sugarcane or two roots from another's field.[7] No fine shall be inflicted for damage done by a cow within ten days after her calving, by bulls and by cattle sacred to the gods, whether or not there

1. *Manu*, IX, 230.
2. Ibid., VIII, 299-300.
3. Ibid., IX, 237.
4. Ibid., VIII, 124-125.
5. *Viṣṇu*, V, 179-180; cf. *Manu*, IX, 242.
6. *Manu*, VIII, 373.
7. Ibid., VIII, 341.

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be a herdsman to look after them.[1] The owner of the cow within ten days after her calving, a full grown bull, a horse, and an elephant is not liable to punishment for any mischief done by them.[2]

The owners of elephants and horses are not liable for any damage done by them, for they are regarded as protectors of the king's subjects. Similarly the owners of a strayed cow, of one that has calved within ten days, of one unmanageable, of one that has lost her way, or broken down or stuck in mud or of a consecrated bull are not liable.[3] The owner of cows straying through the fault of their keeper and entering a field is not liable to any punishment, the herdsman alone is punishable.[4] The herdsman is not liable for any damage done to the grain of a field which being situated on the outskirts of a village, or contiguous to a pasture ground, or adjacent to a highway is not sufficiently protected by a fence.[5]

Penances of various kinds

Penances are religious sanctions. They are various in number. In the case of mortal sins even death is ordained.[6] If the penance is not performed corporal punishment and fines are prescribed in accordance with the law.[7] The penances are generally prescribed in addition to the punishments inflicted by the king. Petty offences may be overlooked by the king, but the offender must stand purified by penances before the king of all kings.

The *Mitākṣharā* clearly explains that the mark of female private parts for violating guru's bed, of a tavern for drinking the liquor called sura, a dog's foot for theft, of a headless corpse for *Brāhmaṇa* murder is to be made on the forehead only if the offender (whether a *Brāhmaṇa* or not) did not perform prāyaśchita for those grave sins.[8]

1. *Manu*, VIII, 242.
2. Ibid., XI, 30.
3. *Nārada*, XI, 32-33.
4. Ibid., XI, 35.
5. Ibid., 40.
6. *Manu*, XI, 104-105.
7. Ibid., IX, 236.
8. *Viṣṇu*, V, 4; Barnes, Study of Punishment, p. 62. cf. *Manu*, IX, 237

गुरुतल्पे भगः कार्यः सुरापाने सुराध्वजः ।
स्तेये च पदं कार्यं ब्रह्महण्यशिराः पुमान् ॥

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TABLE OF OTHER MISCELLANEOUS OFFENCES AND PUNISHMENTS

FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Offence	*Punishment*	*Reference*
Giving false evidence in boundary disputes		
(a) by neighbours	Fine of 500 *paṇas*	*Manu*, VII, 263 *Nārada*, XI, 7
(b) senior residents and members of corporation	Fine of 250 *paṇas*	*Nārada*, XI, 8 *Yājñavalkya*, I, 163
Forging private documents	Death	*Viṣṇu*, V, 10
Forging royal edicts	Death	*Manu*, IX, 232 *Viṣṇu*, V, 9
Making an oath without being asked	Fine of 100 *paṇas*	*Viṣṇu*, V, 118
Witness failing to appear (without being ill) within three fortnights of the service of summon	Fine	*Manu*, VIII, 107 *Bṛhaspati*, VII, 31 *Yājñavalkya*, II, 76
A misfortune befalling a witness (within 7 days of his giving evidence) through sickness, fire or death of relatives	Fine	*Manu*, VIII, 108 *Yājñavalkya*, II, 113

Offence	*Punishment*	*Reference*
Administrators of public affairs marring the business of suitors as well as for taking bribes	Forfeiture of property	*Manu*, IX, 231 *Viṣṇu*, V, 180
Ministers or judges settling any matter improperly	Fine of 1,000 *paṇas*	*Manu*, IX, 234
Judges passing unjust sentences	Banishment	*Bṛhaspati*, XXII, 10
Corrupting the ministers	Death	*Manu*, IX, 232
Making false claim to (a) lost property	Fine equal to the value of the property	*Manu*, VIII, 31-32
(b) treasure-trove	Fine of 1/8 of the accused's property or some smaller portion of the value of the treasure-trove	*Manu*, VIII, 35-36
Plaintiff refusing to speak	Corporal punishment or fine	*Manu*, VIII, 58
Plaintiff suing for a sum not due	Fine of double the sum	*Manu*, VIII, 57
Defendant denying a sum due	Fine of double the sum	*Manu*, VIII, 57

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Offence	*Punishment*	*Reference*
Defendant admitting a debt to be due	Fine of 5 per cent of the debt	*Manu*, VIII, 139
Defendant denying a debt but which is proved afterwards	Fine of 10 per cent of the debt denied	*Manu*, VIII, 139 *Viṣṇu*, VI, 20 *Yājñavalkya*, II, 42
Debtor making complaints against creditor for his having recovered debt out of court	Fine of 1/4 of the sum due	*Manu*, VIII, 176 *Viṣṇu*, VI, 19
Bailee not returning the deposit, or the bailor demanding what was never bailed	Punishment as in the case of theft or fine equal to the value of deposit	*Manu*, VIII, 191 *Nārada*, II, 13 *Viṣṇu*, V, 169-171
Bailee making profit by using the deposit without consent	Fine and restoration of the profit with interest	*Nārada*, II, 8 *Bṛhaspati*, XII, 12
Bailee not restoring an open deposit, or retaining a sealed deposit	Fine equal to the value of the deposit	*Manu*, VIII, 192
Bailor giving a false description of a deposit made in the presence of a number of witnesses	Fine	*Manu*, VIII, 194

Offence	*Punishment*	*Reference*
Obtaining possession of other's property through false pretences	Corporal chastisement	*Manu*, VIII, 193
Accomplices to above	Do.	Do.
Selling other's property without consent		
(a) when the accused is a kinsman of the owner	Fine of 600 *paṇas*	*Manu*, VIII, 197-198
(b) when he is not so nor has any excuse	Punishment as in the case of theft	
Falsely denying possession of common property	Fine of 100 *paṇas*	*Viṣṇu*, V, 111
	DEFAMATION	
A *Brāhmaṇa* defaming a		
(1) *Brāhmaṇa*	Fine of 12 *paṇas*	*Manu*, VIII, 269
(2) *Kshatriya*	,, 50 ,,	*Manu*, VIII, 268
		Gautama, XII, 12
		Bṛhaspati, XX, 7
		Nārada, XV, 16
(3) *Vaiśya*	,, 25 ,,	Do.
(4) *Śūdra* (virtuous)	,, 12 ,,	*Manu*, VIII, 268
A *Kshatriya* defaming a		
(1) *Brāhmaṇa*	,, 100 ,,	*Manu*, VIII, 267

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Offence	*Punishment*	*Reference*
(2) *Kshatriya*	Fine of 12 *paṇas*	*Gautama*, XII, 8
(3) *Vaiśya*	,, 50 ,,	*Nārada*, XV, XVI, 15
(4) *Śūdra*	,, 20 ,,	*Manu*, VIII, 269
		Bṛhaspati, XX, 9
		Bṛhaspati, XX, 10
A *Vaiśya* defaming a		
(1) *Brāhmaṇa*	,, 150 ,, to 200	*Manu*, VIII, 267
		Gautama, XII, 10
		Nārada, XV, XVI, 10
(2) *Kshatriya*	,, 100 ,,	*Bṛhaspati*, XX, 9
(3) *Vaiśya*	,, 12 ,,	*Manu*, VIII, 267
(4) *Śūdra*	,, 40 ,,	*Bṛhaspati*, XX, 10
A *Śūdra* defaming a		
(1) *Brāhmaṇa*	Corporal punishment	
(2) *Kshatriya*	Fine of 500 *paṇas*	*Bṛhaspati*, XX, 11
(3) *Vaiśya*	,, 250 ,,	*Bṛhaspati*, XX, 11
Note: In the above four cases when speeches used are such as ought not to have been uttered	Double the fine prescribed	*Manu*, VIII, 269 *Nārada*, XV, XVI, 17
A *Śūdra*		
(a) insulting a twice born man with	Tongue to be cut off	*Manu*, VIII, 270

Offence	*Punishment*	*Reference*
gross invectives		*Gautama*, XII, 1 *Viṣṇu*, V, 23 *Nārada*, XV, XVI, 22 *Bṛhaspati*, XX, 12
(b) mentioning the names and castes of the twice born contumely (c) arrogantly teaching Brāhmaṇas their duty	Iron nail ten fingers long to be thrust red hot into the mouth Hot oil to be poured into mouth and ear	*Manu*, VIII, 271 *Viṣṇu*, V, 25 *Nārada*, XV, XVI, 123 *Manu*, VIII, 272 *Viṣṇu*, V, 24 *Nārada*, XV, XVI, 24
Mutual abuse between (a) *Brāhmaṇas* (b) *Kshatriyas* (c) a *Vaiśya* and a *Śūdra*	Fine of 250 *paṇas* ,, 500 ,, Vaiśya 250 ,, Śūdra 500 ,,	*Manu*, VIII, 276 *Manu*, VIII, 276 *Manu*, VIII, 277
Persons equal in caste and qualities abusing one another	Fine of 13 ,,	*Bṛhaspati*, XX, 6
Arrogantly making false statements regarding the learning of a caste fellow, his country, his caste or the rites by which his	,, 200 ,	*Manu*, VIII, 273 *Viṣṇu*, V, 26

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Offence	*Punishment*	*Reference*
body was sanctified Calling the blind blind, the lame lame etc.	Fine of 2 *kārṣāpaṇas*	*Viṣṇu*, V, 27 *Manu*, VIII, 274 *Nārada*, XV, XVI, 18
Defaming his father, mother, wife, brother, son or teacher	,, 100 *paṇas*	*Manu*, VIII, 275 *Viṣṇu*, V, 28
Imputing to another		
(a) great crime entailing loss of caste	,, 1000 ,,	*Viṣṇu*, V, 29
(b) minor offence	,, 500 ,,	*Viṣṇu*, V, 30
Reviling		*Bṛhaspati*, XX, 14
(1) *Brāhmaṇas* versed in the Vedas, old men, or a whole caste or corporation	,, 500 ,,	*Viṣṇu*, V, 31
(2) a village or a district	,, 250 ,,	*Viṣṇu*, V, 32
(3) a person's native country	,, 12½ ,,	*Bṛhaspati*, XX, 14

Offence	*Punishment*	*Reference*
Using insulting language towards		
(1) daughter or sister	Fine of 100 *kārṣāpaṇas*	*Viṣṇu*, V, 33 *Bṛhaspati*, XX, 13
(2) mother	,, 1,000 *paṇas*	*Viṣṇu*, V, 34
Abusing a man of		
(1) his own caste	,, 12 ,,	*Viṣṇu*, V, 35
(2) lower caste	,, 6 ,,	*Viṣṇu*, V, 36
Maliciously saying of maiden that she is not a maiden	,, 100 ,,	*Nārada*, XII, 34 *Manu*, VIII, 225
Saying of an unblemished girl that she has a blemish	,, 1,000 ,,	*Viṣṇu*, V, 47
	THEFT	
Stealing		
(i) rope or water-pot from a well	Fine of 1 *māśā*	*Manu*, VIII, 319
(ii) grain		
(a) of more than two *Kumbhas* in weight	Death	*Manu*, VIII, 320 *Viṣṇu*, V, 12
(b) in other cases	Fine of II times	*Manu*, VIII, 320

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Offence	*Punishment*	*Reference*
	the value	*Viṣṇu*, V, 79, 80
(iii) articles sold by weight e.g. of gold, silver etc. and of most excellent clothes, when the weight is more than		
(a) 100 palas	Death	*Manu*, VIII, 321 *Viṣṇu*, V, 13
(b) 50 palas	Hands to be cut off	*Manu*, VIII, 322 *Viṣṇu*, V, 81
(c) in other cases	Fine of II times the value	*Manu*, VIII, 322 *Viṣṇu*, V, 82
(iv) gems	Fine of 100 *paṇas*	*Viṣṇu*, V, 87
(v) most valuable gems	Corporal punishment	*Manu*, VIII, 323
(vi) cow, horse, camel or elephant	One hand to be cut off	*Viṣṇu*, V, 77 cf. *Manu*, VIII, 324 and *Manu*, IX, 280
(vii) goat or sheep	One hand to be cut off	*Viṣṇu*, V, 78
(viii) cows belonging to *Brāhmaṇas* for the purpose of	Loss of half the feet	*Manu*, VIII, 325

Offence	*Punishment*	*Reference*
piercing their nostrils or other cattle		
(ix) thread, cotton, drugs causing fermentation, cow-dung, molasses, milk, sour milk, butter milk, water, salt, grass, bamboo or other cane vessels, earthen vessels, earth, ashes, fishes, birds, oil, clarified butter, meat, honey and similar other things, spirituous liquor, boiled rice and every kind of cooked food	Fine of twice the value of the thing stolen	*Manu*, VIII, 326-329 *Viṣṇu*, V, 83-84
(x) flowers, green corn, shrubs, creepers, leaves, pot herbs, trees and unhusked grain	Fine of 5 *kṛṣṇalas*	*Manu*, VIII, 330 *Viṣṇu*, V, 85-86 *Gautama*, XII, 18
(xi) husked grain, vegetables, roots and fruits		

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Offence	*Punishment*	*Reference*
(a) when there is no relation between the owner and the thief	Fine of 100 *paṇas*	*Manu*, VIII, 331
(b) when there is such relation	,, 50 ,,	*Manu*, VIII, 331
Stealing any of the above articles when they are prepared for use	,, 250 ,,	*Manu*, VIII, 333
Stealing a sacred fire from the room where it was kept	,, 250 ,,	*Manu*, VIII, 333
Stealing lost property while in the custody of the crown	To be slain by an elephant	*Manu*, VIII, 34
Stealing agricultural implements, arms or medicines	Banishment to be inflicted considering the time and the proposed use of the articles	*Manu*, IX, 293 VIII, 324
Stealing anything not specially mentioned	Compensation to the owner	*Viṣṇu*, V, 88
Stealing men of noble families and woman	Corporal punishment	*Manu*, VIII, 323
Robbers breaking into	To be impaled on	*Manu*, IX, 276

Offence	*Punishment*	*Reference*
houses and committing theft at night	a pointed stake	
Breaking into royal storehouse, armoury or temple	Death	*Manu*, IX, 280
Cutpurse		
(a) on first conviction	2 fingers to be cut off	*Manu*, IX, 277
(b) on second conviction	One hand first to be cut off	Do.
(c) on third conviction	Death	Do.

Offences described above when committed in the presence of the owner and with violence will be robbery, if committed in his absence it will be theft, likewise if possession of anything is denied after it has been taken.[1]

Exceptions: (1) It is no theft to take roots from trees or wood for a sacrificial purpose or grass for feeding the cows.[2]

(2) When the provisions of a twice born are used up during a journey it is no offence for him to take stalks of sugarcane or two esculent roots from other fields.[3]

Notes: (1) In all cases the thieves shall be compelled to restore the stolen goods to the owner.[4]

(2) A man who knowingly becomes the servant of a thief, or knowingly receives goods from a thief shall be treated like a thief.[5]

1. *Manu*, VIII, 332
स्यात्साहसं त्वन्वयवत्प्रसभं कर्म यत्कृतम् ।
निरन्वयं भवेत्स्तेयं हृत्वाऽपव्ययते च यत् ।।

2. Ibid., VIII, 339
वानस्पत्यं मूलफलं दार्वग्न्यर्थं तथैव च ।
तृणं च गोभ्यो ग्रासार्थमस्तेयं मनुरब्रवीत् ।।
cf. *Gautama*, XII, 28.

3. *Manu*, VIII, 341.

4. *Viṣṇu*, V, 89.

5. *Gautama*, XII, 49, 50.

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(3) A *Brāhmaṇa* who gets from a person by sacrificing for him or teaching him, some property obtained by theft is like a thief.[1]

(4) As a preventive measure the limb with which a thief commits an offence shall be cut off by the king.[2]

(5) Neither father, mother, teacher, friend, wife, son nor domestic priest must be left unpunished.[3]

(6) Punishment for the king should be thousand times greater than that for a common man.[4]

(7) Relatives who appropriate the property of females, who are barren, who have no son, who are maidens, who are faithful to their husbands or who are suffering from disease are to be punished like thieves.[5]

ASSAULT AND HURT

Offence	*Punishment*	*Reference*
A man of the low caste	The offending	*Manu*, VIII, 279
(i) hurting a man of the three higher castes, or	limb to be cut off	
(ii) placing himself on the same seat with his superior, or	Banishment after branding on the hip or gashing of the buttock	*Manu*, VIII, 281 *Viṣṇu*, V, 20 *Gautama*, XII, 7 *Nārada*, XV, XVI, 26
(iii) spitting on him, or	Lips to be cut off	*Manu*, VIII, 282
(iv) passing urine on him, or	Penis to be cut off	*Manu*, VIII, 282

1. *Manu*, VIII, 340.
2. Ibid., VIII, 334.
3. Ibid., VIII, 335.
4. Ibid., VIII, 336.
5. Ibid., VIII, 28, 29.

Offence	*Punishment*	*Reference*
(v) breaking wind against him, or	Anus to be cut off	*Manu*, VIII, 282
(vi) pulling him by the beard, hair, foot, neck or scrotum	Hands to be cut off	*Manu*, VIII, 283 *Nārada*, XV, XVI, 28
Between equals		
(i) Raising one's hand	Fine of 10 *kārṣāpaṇas*	*Viṣṇu*, V, 60
(ii) Raising one's foot	Fine of 20 *kārṣāpaṇas*	*Viṣṇu*, V, 61
(iii) Raising a piece of wood	Fine of 250 *paṇas*	*Viṣṇu*, V, 62
(iv) Raising one stone	,, 500 ,,	*Viṣṇu*, V, 63
(v) Raising one weapon	,, 1000 ,,	*Viṣṇu*, V, 64
(vi) Seizing one by his foot, hair, garment or hand	,, 10 ,,	*Viṣṇu*, V, 65
(vii) Causing pain without drawing blood	,, 32 ,,	*Viṣṇu*, V, 66 *Manu*, VIII, 284
(viii) Fetching one's blood	,, 64 ,,	*Viṣṇu*, V, 67
(ix) Mutilating or injuring a hand, foot, tooth, or slitting an ear or nose	,, 500 ,,	*Viṣṇu*, V, 68
(x) Incapacitating a man to move, eat or speak	,, 500 ,,	*Viṣṇu*, V, 69
(xi) Striking violently	,, 500 ,,	Do.

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Offence	*Punishment*	*Reference*
(xii) Wounding or breaking an eye, neck, arm, bone or shoulder	Imprisonment for life, or mutilation of both eyes	*Viṣṇu*, V, 70
(xiii) Striking out both eyes	Fine of 1,000 *paṇas*	*Viṣṇu*, V, 71 *Manu*, VIII, 284 *Nārada*, XV, XVI, 29

Notes: (1) When a single person is attacked by several persons at a time the punishment on each of the assailants shall be double.[1]

(2) Similarly double punishment should be inflicted on those who render no assistance to people in need of help.[2]

Killing	Fine of 100 *kārṣāpaṇas*	*Viṣṇu*, V, 5
(i) domestic animals but in the case of elephants, horses, camels, or cows	Hand or foot to be cut off	*Viṣṇu*, V, 48
(ii) wild animals	Fine of 500 *kārṣāpaṇas*	*Viṣṇu*, V, 52
(iii) birds or fish	,, 10 ,,	*Viṣṇu*, V, 53
(iv) insects	,, 1 ,,	,, 54
Cutting		
(i) trees yielding fruits	,, 1000 ,,	,, 55
(ii) trees yielding flowers only	,, 500 ,,	,, 56

1. *Viṣṇu*, V, 73. 2. Ibid., V, 74.

Offence	*Punishment*	*Reference*
(iii) creepers, shrubs etc.	Fine of 100 *kārṣāpaṇas*	Viṣṇu, V, 57
(iv) grass	,, 1 ,,	,, 58
		Manu, VIII, 285
Damaging the goods of others intentionally or unintentionally	Compensation to the owner and fine equal to damage done	,, 288
Damaging leather, utensils of leather, of wood or of clay, and flowers, roots and fruits	Fine of 5 times the value	,, 289
Damaging a hut where water is distributed	Compensation and fine of 1 *māśā*	,, 319

Notes: All those who have caused hurt to a man shall bear the expenses of his cure.[1]
Wife, son, slave, younger brother of full blood and pupil when they have committed faults may be beaten on back part only with a rope or split bamboo.[2]

Damage done by one's cart turning off the road through	
(i) the driver's want of skill	Owner to be fined 200 *paṇas* and each of the occupants of the cart 100 *paṇas*

1. *Viṣṇu*, V, 75; cf. *Manu*, VIII, 287.
2. *Manu*, VIII, 299-300
भार्यापुत्रश्चदासश्च प्रेष्यो भ्राता च सोदरः । पृष्ठतस्तु शरीरस्य नोत्तमाङ्गे कथंचनः ।
प्राप्तापराधास्ताड्याः स्यू रज्ज्वा वेणुदलेन वा । अतोऽन्यथा तु प्रहरन्प्राप्तः स्याच्चौरकिल्बिषम् ॥

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Offence	*Punishment*	*Reference*
(ii) the driver's negligence	Driver to be fined	*Manu*, VIII, 293, 294
Driver having been stopped on his way by cattle or by another carriage and thereby killing		
(i) men	Punishment same as in the case of theft	
(ii) elephants, camels, horses, cows, and other large animals	Half of above	*Manu*, VIII, 295, 296
(iii) small cattle	Fine of 200 *paṇas*	,, 297
(iv) beautiful wild quadrupeds and birds	,, 50 ,,	Do.
(v) donkeys, sheep or goats	,, 5 *māśās*	,, 298
(vi) dogs or pigs	,, 1 ,,	Do.

Exception: With respect to a carriage, its driver and owner, no punishment for damage done should be inflicted when the nose-string is snapped, the yoke is broken, the carriage turns sideways or back, axle or wheel is broken, leather thongs are broken, the rope round the neck or the bridle is broken or when the driver has given warning loudly calling out "Make way".[1]

1. *Manu*, VIII, 290-292

यानस्य चैव यातुश्च यानस्वामिन एव च ।
दशातिवर्तनान्याहुः शेषे दण्डो विधीयते ॥
छिन्ननास्ये भग्नयुगे तिर्यक्प्रतिमुखागते ।
अक्षमे च यानस्य चक्रभ तथैव च ॥
छेदने चैव यत्राणां योक्त्ररश्म्योस्तथैव च ।
आक्रन्दे चाप्यपैहीति न दण्डं मनुरब्रवीत् ॥

Offence	*Punishment*	*Reference*
Herdsman allowing the cattle in his charge to do mischief		
(a) in the enclosed field near a highway or near a village	Compensation to the owner and fine of 100 *paṇas*	*Manu*, VIII, 240
(b) in other fields	Compensation and fine of 1¼ *paṇas* for each head of cattle	,, 241 cf. *Gautama*, XII, 22-26 *Viṣṇu*, V, 140-46

Note: If the crops are destroyed by husbandman's own fault the fine shall be 10 times the king's share but if the fault lay with the servants and the farmer had no knowledge of it the fine shall be only half.[1]

Exception: No fine shall be paid for damage done by a cow within 10 days after the calving, by a full grown bull, horse, elephant or some other cattle sacred to the gods.[2]

OFFENCES RELATING TO THE STATE

Serving the king's enemies or conspiring with them	Death	*Manu*, IX, 232, 275
Persevering in opposing the king's commands	Death	*Manu*, IX, 275
Censuring a king devoted to his duties	Tongue to be cut off and property to be confiscated	*Nārada*, XV, XVI, 30

1. *Manu* VIII, 247 cf. *Nārada*. XI, 28-35.

2. *Manu*, VIII, 242. cf *Nārada*, XI, 30.

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Offence	*Punishment*	*Reference*
Assailing a king though he is wicked	To be burnt in fire	*Nārada*, XV, XVI, 31
A person of low birth aspiring to sovereignty	Death	*Viṣṇu*, V, 14
Robbing the king's treasury	Death	*Manu*, IX, 275
Giving shelter and food to robbers	Death	*Manu*, IX, 271, 280 *Viṣṇu*, V, 16
Breaking open a house on which king's seal has been laid	Fine of 100 *paṇas*	*Viṣṇu*, V, 117
Destroying the wall of a town, filling up the ditch round a town or breaking a town gate	Banishment	*Manu*, IX, 289
Breaking dykes	Death	*Viṣṇu*, V, 15
Exporting forbidden goods or goods of which the king has a monopoly	Forfeiture of property	*Manu*, XIII, 399 *Viṣṇu*, V, 130
A trader avoiding a customs house or a toll, buying or selling at an improper time, or making a false statement in the enumeration of his goods	Fine of 8 times the amount of duty tried to be evaded	*Manu*, VIII, 400 *Nārada*, III, 13 *Viṣṇu*, III, 31

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Offence	*Punishment*	*Reference*
Failing to render assistance when a village is being plundered, a dyke is being destroyed, or a high robbery committed	Banishment	*Manu*, IX, 274
OFFENCES RELATING TO THE PUBLIC		
Dropping filth on the highway, garden or water	Fine of 2 *kārṣāpaṇas*	*Manu*, IX, 282 *Viṣṇu*, V, 106-107
Exception: Persons in urgent necessity, old men, pregnant women and children are exempted.[1]		
Throwing into another's house articles which might cause hurt	Fine of 100 *paṇas*	*Viṣṇu*, V, 110
Destroying bridges, flags, poles, images, houses or walls	,, 500 ,,	*Manu*, IX, 285 *Viṣṇu*, V, 108-109
Breaking the dam of a tank	To be slain by being drowned in water, or by some other simple mode of capital punishment or if the offender repairs the damage fine of 100 *paṇas*	*Manu*, IX, 279

1. *Manu*, IX, 283
आपदतो थवा वृद्धा गर्भिणी बाल एव वा ।
परिभाषणमर्हन्ति तत्त्व शोध्यमिति स्थितिः ॥

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Offence	*Punishment*	*Reference*
Taking away the water of an ancient tank or cutting off the supply of water	Fine of 1000 *paṇas*	*Manu*, IX, 281
Destroying boundary marks	Mutilation	,, 291
Destroying land marks	Fine of 1000 *paṇas*	*Viṣṇu*, V, 172
Obstructing public thoroughfares or the sanctuary of a deity by a terrace, pit, aqueduct, edge of a thatch forcibly or inadvertently	Do.	*Nārada*, XI, 15, 16
Physicians treating their patients wrongly in the case of		*Manu*, IX, 284
(i) animals	Fine of 250 *paṇas*	*Viṣṇu*, V, 177
(ii) human beings	,, 1000 ,,	*Viṣṇu*, V, 175
(a) of high rank	,, 500 ,,	*Manu*, IX, 284
(b) common		*Viṣṇu*, V, 176
Selling forbidden food	,, 1000 ,,	,, 174
Selling forbidden meat	One hand and one foot to be cut off	*Viṣṇu*, V, 49
Selling adulterated commodities	Fine of 1000 *paṇas*	*Viṣṇu*, V, 124
Adulterating unadulterated commodities	,, 250 ,,	*Manu*, IX, 286

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Offence	*Punishment*	*Reference*
Forging balances or measures, or pronouncing them incorrect when they are correct	Fine of 1000 *paṇas*	*Viṣṇu*, V, 122, 123
Ferrymen demanding toll from students, hermits, ascetics, pregnant women and pilgrims	,, 10 ,,	*Viṣṇu*, V, 133
Taking up seed already sown	Mutilation	*Manu*, IX, 291
Depriving cattle of their virility	Fine of 100 *paṇas*	*Viṣṇu*, V, 119
GAMBLING AND BETTING		
Gambling or betting or affording opportunities for the same	Corporal punishment, banishment or fine	*Manu*, IX, 224, 255, 228
Using false dice in gambling	Loss of one hand	*Viṣṇu*, V, 234
Resorting to fraudulent practices	Loss of two fingers	*Viṣṇu*, V, 135
TRESPASS		
Trespassing into another's house, tank, garden or field (a) by intimidation	Fine of 500 *paṇas*	*Manu*, VIII, 264

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Offence	*Punishment*	*Reference*
(b) through ignorance	Fine of 200 *paṇas*	*Manu*, VIII, 264
	OFFENCES RELATING TO MARRIAGE	
Giving a blemished girl to a suitor without informing him of the blemish	Fine of 96 *paṇas*	*Manu*, VIII, 224 *Nārada*, XII, 33 *Viṣṇu*, V, 45 *Yājñavalkya*, I, 66
Promising to marry one's daughter to a suitor (faultless) but afterwards refusing to do so	Punishment same as in the case of theft	*Viṣṇu*, V, 160 *Nārada*, XII, 32 *Yājñavalkya*, I, 65
Refusing to marry a maiden after having plighted one's faith to her	Fine and the man being also compelled to marry the girl	*Viṣṇu*, V, 162 *Yājñavalkya*, I, 66 *Nārada*, XII, 35
Forsaking a blameless wife	Punishment same as in the case of theft	*Viṣṇu*, V, 163
	BREACH OF CONTRACT	
A hired servant or workman without falling ill, failing to	Fine of 8 *kṛṣṇalas* and non-payment of	*Manu*, VIII, 215

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Offence	*Punishment*	*Reference*
perform work according to agreement	wages	
Hired servant whether sick or well failing to perform or cause to be performed his work according to the agreement	Non-payment of wages even if the work be rightly incomplete	*Manu*, VIII, 217
Hired workman abandoning his work before the expiry of the term	Fine of 100 *paṇas*	*Viṣṇu*, V, 153, 154 *Yājñavalkya*, II, 193
Servant in tillage or herdsman abandoning his work	Flogging	*Āpastaṁba*, II, 28, 2, 3
Members of a community or corporation breaking a sworn agreement through avarice	Banishment or imprisonment and a fine of 6 *niṣkas*, 4 *suvarṇas* and 1 *śatamāna* of silver	*Manu*, VIII, 219, 220 *Viṣṇu*, V, 168
Dismissing a workman before term	Fine of 100 *paṇas*	*Viṣṇu*, V, 158
A prostitute refusing to receive a man after accepting fees from him	Fine of twice the amount of fee	*Nārada*, VI, 18
Refusing to pay a prostitute after enjoying her	Do.	Do.

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Offence	*Punishment*	*Reference*
Unnaturally abusing the person of a public woman or causing her to be approached by many	Fine of 8 times the amount of her fee	*Nārada*, VI, 18
Returning or taking away a thing bought or sold after the period of grace (i.e. 10 days)	Fine of 600 *paṇas*	*Manu*, VIII, 223
Delivering a thing different from what was contracted for and inferior in quality	Fine of twice the value of the thing	*Nārada*, VIII, 7
Selling something to one person and delivering it to another	Fine	
Refusing to deliver a thing sold	Fine of 100 *paṇas*	*Viṣṇu*, V, 828
Failing to give something promised	,, 250 ,,	,, 158
Mortgaging a land for the second time		
(i) when it is more than one bull's hide	Whipping or imprisonment	,, 181
(ii) otherwise	Fine of 16 *suvarṇas*	,, 182
A weaver failing to return cloth weighing 11 palas when he has received 10 palas of thread	Fine of 12 *paṇas*	*Manu*, VIII, 392
Behaving dishonestly	Fine of 250 or 500	*Manu*, IX, 287

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Offence	*Punishment*	*Reference*
with customers	*paṇas*	
Selling for seed corn what is not so	Mutilation	*Manu*, IX, 291
Goldsmith behaving dishonestly	To be cut to pieces with razors	,, 292
Merchants mixing bad and good things together, passing off articles with blemishes, or selling old articles after repairs	Fine equal to the value of the articles	*Bṛhaspati*, XXII, 7
A member of a company selling any of their articles on his account	Fine of 1000 *paṇas*	*Viṣṇu*, V, 126
A company preventing the sale of a commodity which happens to be abroad by selling it under its price	Do.	,, 125

OFFENCES RELATING TO RELIGION AND SOCIETY

Sacrificer forsaking an officiating priest or vice versa	Fine of 100 *paṇas*	*Manu*, VIII, 388 *Nārada*, III, 9
A *Śūdra* (i) listening to the *Vedas* intentionally	Ears to be filled with molten tin or lac	*Gautama*, XII, 4

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Offence	*Punishment*	*Reference*
(ii) reciting the *Vedas* or teaching the *Vedas*	Tongue to be cut off	*Gautama*, XII, 5 *Bṛhaspati*, XX, 12
(iii) remembering the *Vedas*	Body to be split in twain	*Gautama*, XII, 6
Neglecting to worship those who should be worshipped	Fine of 5 *kārṣāpaṇas*	*Viṣṇu*, V, 93
Neglecting to invite at Śrādhas a Brāhmaṇa neighbour, or offering him no food after having invited him	Do.	*Viṣṇu*, V, 94, 95 *Manu*, VIII, 285
A Śrotriya not entertaining a virtuous Śrotriya at auspicious festivities	Fine of 1 *māśā* of gold	*Manu*, VIII, 393
Refusing to take food after having accepted invitation	Fine of 1 gold *māśaka*	*Viṣṇu*, V, 96
Offering *Brāhmaṇas*		
(i) food which is uneatable or forbidden	Fine of 16 *suvarṇas*	*Viṣṇu*, V, 98
(ii) which would cause degradation of caste	,, 100 ,,	,, 99
(iii) spirituous liquor	Death	,, 100, 101-3

Note: In the case of *Kshatriyas* the punishment would be half, in the case of *Vaiśyas* $\frac{1}{4}$ and in the case of *Śūdras* fine of 250 *paṇas*.

Offence	*Punishment*	*Reference*
Neglecting to offer seats to the guests and the like	Fine of 5 *kārṣāpaṇas*	*Viṣṇu*, V, 92
Failing to make way for those for whom way ought to be made	Do.	,, 91
Entertaining *Śūdras* or ascetics at oblations to gods and manes	Fine of 100 *paṇas*	,, 115
Following unlawful occupations	Do.	,, 116
Committing *Brāhmaṇas* to slavery	Do.	,, 151
Brāhmaṇas out of greed and power making initiated men of the twice born castes do the work of slaves against their will	,, 600 ,,	
Taking forbidden food knowingly	Banishment	,, 173
Chāṇḍālas and other untouchables defiling by touch the twice born	Death	,, 104
Women in their courses touching the untouchables	Flogging	,, 105
For practising incantation, magic, sorcery etc.	Fine of 200 *paṇas*	*Manu*, IX, 290

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Offence	*Punishment*	*Reference*
Casting off father, mother, wife or son not guilty of a crime causing loss of caste	Fine of 600 *paṇas*	*Manu*, VIII, 389
Witnessing a combat between father and son	,, 10 ,,	*Viṣṇu*, V, 120
Acting as surety in a combat between father and son	,, 1000 ,,	,, 121

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CHAPTER SIX

Miscellaneous Matters

Appeals, Revision and Retrials

Mention has already been made of the appeal which a suitor could make to a higher tribunal, if in his opinion the judgment of the lower court was not impartial or reasonable. The legal procedure of the ancient *Hindus* also allowed retrial of cases. If it were proved by the retrial that the cases had been enquired into with prejudice and partiality, and if the accused were found to be not guilty, in that case the king is empowered to punish the authorities of the lower court for their irresponsible conduct and take legal proceedings against the really guilty party.[1] If on the other hand a man who is legally defeated makes a fresh appeal, his suit could be dismissed with a penalty for his having unjustly resorted to the court a second time, and thus casting unfair reflection on the lower court.[2] It would now be necessary to see in what cases review of judgment was allowed. The general rule is stated by *Manu*:[3]

> Whenever any legal proceeding has been completed or has been carried out so far as to recover a fine from the defeated party, a wise king shall not annul it.

By appeal the whole case is retried on its merits both of law and of facts whereas on error only alleged mistakes in law by the court below are considered.

The following law-givers have given their opinions as appended below:

Bṛhaspati[4]

(1) A decision must not be made solely by having recourse to the latter of written courts; since if no decisions were

1. *Yājñavalkya*, II, 308-309.
2. *Śukra*, IV, 5, 85-91, 109, 126.
3. *Manu*, IX, 233.
4. *Bṛhaspati*, VI, 4, 5, 6.

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made according to the reason of the law or according to immemorial usage, there might be a failure of justice.

(2) When a man is aggrieved by the decision passed by meeting of kindred or other judicial body, the king should revise the decision declared by them and institute a fresh trial, if it should prove unjust.

After having considered the matter in common with many *Brāhmaṇas* well-versed in science, he should punish the wicked men, who were acting as judges in the former trial, together with the victorious party.

Manu[1]

(1) If the ministers or the judges decide any case improperly the king himself shall revise it and punish them with a fine of one thousand dollars.

(2) A judgment based on a false evidence of a perjured witness must be reversed and all proceedings in the case must be held as inoperative.

This view has been supported by *Viṣṇu* also.

(3) Neither the king nor any servant of his shall themselves institute any law suit or hush up one that has been lodged before them by some other persons.

Nārada

(1) If a cause is lost in consequence of the dishonesty of witnesses and judges, it may be tried anew. But no retrial is to be directed if the person who applies for the retrial is in fault.[2]

(2) A retrial is directed in the following cases:
   (a) When the decision is based on no evidence.
   (b) When the case has been decided in an improper manner.
   (c) When the decision is by an unauthorised person.

(3) A review is granted for discovery of new evidence either oral or documentary which was not produced at the first trial.[3]

(4) The judge should not pass a judgment to please the

1. *Manu*, IX, 234, VII, 117. cf. *Viṣṇu*, VIII, 40.
2. *Nārada*, plaint, 40.
3. Ibid., 62.

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biased mind of the king. He becomes free from sin by judging fairly and impartially.[1]

(5) In the case of a woman, at night, outside the village in the interior of a house, and by enemies, a sentence passed in any one of the circumstances is liable to be reversed.[2]

(6) A man aggrieved by a wrong decision and sentence that are contrary to justice may have the case retried provided he should pay twice the amount of the fine inflicted.[3]

Nārada lays down a qualification that when a party has been defeated by his own conduct there is to be no retrial or review of judgment, but where a man has lost his cause through (the dishonesty of) witnesses or the sabhyās, the cause may be tried anew.[4] There are four exceptions to the finality of the judgment of the king's court:

(a) Where a litigant either through folly or insolence thinks a decision to be wrong, he may be allowed a retrial, provided he agrees to pay double the fine inflicted on the losing party.[5]

(b) Where the former judgment is obtained by fraud or force, it may be set aside.[6]

(c) Where the litigant was incompetent, i.e. was a woman or a minor or a lunatic or intoxicated, seriously ill or distressed by a calamity or where the proceeding was

1. *Nārada*, Judicial procedure, 10.
2. Ibid., Introduction, 43.
3. Ibid., 65
   वीरितं चातुशिष्टं च यो मन्येत विधर्मतः ।
   द्विगुणं दण्डमास्थाय तत्कार्यं पुनरुद्धरेत् ॥
4. Ibid., II, 40
   साक्षिसभ्या वसन्नानां दूषणे दर्शनं पुनः ।
   स्वचर्याविसितानां तु नास्ति पौनर्भवो विधिः ॥
5. *Yājñavalkya*, II, 306; *Kātyāyana*, 496; *Nārada*, Introduction, 65. cf. *Bṛhaspati* quoted by *Vyavahāraprakāśa*, p. 91
   कुलादिभिर्निश्चितेपि संतोष नगतस्तुयः ।
   विचार्यं तत्कृतं राजा कुकृत पुनरुद्धरेत् ॥
6. *Yājñavalkya*, II, 31
   बलोपधिविनिवृत्तान् व्यवहारान्निवर्तयेत् ॥

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carried on by another on behalf of a litigant who did not appoint him or with whom he was not connected in any way or was held inside a house or outside a town or village (i.e. in a forest) or by an enemy, the decision may be set aside and a retrial ordered.[1]

(d) A king could set right a former decision of his predecessor which was unjust and arrived at through ignorance.[2]

Yājñavalkya prescribes that legal proceedings that are suspected to have been wrongly decided by the *sabhyās* through partiality or greed or intimidation should again be tried by the king and if the suspicion turns out to be true he should levy from the *sabhyās* and the party who at first succeeded double the fine that is imposed on a defeated party.[3]

Writ

According to the practice of the common law-courts, there were prescribed writs for various actions. No suit could be instituted for which no writ was provided for. The defects of this system were sought to be remedied by the court of chancery. Here again, much depended on the conscience and the inner sense of justice of individual chancellors. In course of time, series of precedents settled the rules of equity and its elastic nature was transformed into rigidity in the same way as the rules of the common law.

Compromise

A compromise with the court's permission was allowed when the parties were in doubt as to what the witnesses might say or the Sabhyās might decide (in such cases it would be wisdom for the parties to compromise) and particularly when the evidence on both sides was evenly balanced or where there was a conflict between the different *Smṛtis* and usages.

It is an adjustment of a controversy by mutual consent so as to prevent or end a law-suit of which settlement is

1. SBE, XXXIII, p. 16. cf.. *Yājñavalkya*, II, 31-32.
2. *Mitākṣarā* on *Yājñavalkya*, II 306
   न्यायापेतं यदन्येन राज्ञाज्ञानकृतं भवेत् ।
   तदप्यन्याय विहितं पुनर्न्याये निवेशयेत् ॥
3. *Nārada*, I, 66; *Yājñavalkya*, II, 4, 305.

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substantiable at law. An offer made by the plaintiff but rejected by the defendant is not binding on either party.

Amicable settlement is always recommended. The results of litigations are uncertain. Nobody knows for certain as to what the witnesses will depose and what the judges will decide, clever are the litigants, therefore, who come to a mutual understanding while the uncertainty lasts.[1] *Bṛhaspati* says that when the evidence is equally strong on both sides and law and custom are divided, a mutual reconciliation between the parties through royal order is recommended under such circumstances.[2]

Law of Limitation

The law of limitation is scanty since *Hindus* who are traditionally a religious minded people do not like to defeat the just right of others simply by the plea of limitation which is almost dishonesty on a moral point of view. The duty of the government is, of course, to ensure that:

(1) Men should be free from suspense,
(2) Peace and order of the society is maintained,
(3) Undisturbed possession of property held for a long time is secured,
(4) Stagnation of property is curbed,
(5) Free circulation of wealth is facilitated,
(6) Slothful and indolent are punished, and
(7) The vigilant and the industrious are encouraged.

On the other hand, it is also the duty of the government to see that:

(1) The weak must be protected,
(2) The assertion of right by might is checked,
(3) Men's just rights are maintained, and
(4) No unfair advantage is claimed by anybody.

We have seen in the preceding pages that the *Hindu* lawgivers enacted legal doctrines in peaceful concert with religion and morality. Keeping this particular aspect of solid life in view and the duties of the administration explained above, the law of limitation was evolved out of the consent of morality, religion and the silent approval of the society.

1. *Bṛhaspati*, V, 12.
2. Ibid., 13.

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The law of limitation does not apply to the following cases:

(1) A pledge and deposit are not lost by lapse of time; they are both recoverable even though they have remained long with the bailee.[1]

(2) Things of which one has permissive possession under friendly assent, a cow, camel, a riding horse and a beast made over for breaking in are never lost to the owner.[2]

(3) A pledge, a boundary, the property of minors, an open deposit, a sealed deposit, woman, royal property and the wealth of a *śrotriya* are not lost by reason of adverse enjoyment.[3]

(4) The property of an idiot or a minor, property used by *śrotriyas*, ascetics, royal officers, animals, land and females are not lost to the owner.[4]

(5) The property of a woman and of a king is never lost to the owner by adverse possession though it may be for hundreds of years.[5]

(6) Husbands of daughters, learned priests, the king or his ministers do not acquire a title even by long and silent possession. The creditor can recover his dues from his debtor, his son and grandson. In other words after the death of the first three the claim is virtually barred and becomes irrecoverable. The law requires the creditor to look sharp and to try to realise his dues either from his debtor or from his debtor's next two generations.[6]

1. *Manu*, VIII, 145
   आधिश्चोपनिधिश्चोभौ न कालात्ययमर्हतः ।
   अवहार्यौ भवेतां दीर्घकालमवस्थितौ ।।
2. Ibid., 146
   संप्रीत्या भुज्यमानानि न नश्यन्ति कदाचन ।
   धेनुरुष्ट्रो वहन्नश्वो यश्च दम्यः प्रयुज्यते ।।
3. *Yājñavalkya*, II, 25; *Nārada*, I, 81; *Manu*, VIII, 149; *Vaśiṣtha*, XVI, 18
   अन्यथाप्युदाहरन्ति ।
   आधिः सीमा बालधनो निक्षेपोपनिधिस्त्रियः ।
   राजस्वं श्रोत्रियद्रव्यं न संभोगेन हीयते ।।
4. *Gautama*, XII, 37-39.
5. *Nārada*, I, 83.
6. *Bṛhaspati*, XI, 90; cf. *Nārada*, I, 4.

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(7) The property of a house, arable land, market, or other immovables which are possessed by a friend or a near kinsman in the male or female line who is not the proprietor, shall not be lost to the rightful owner.[1]

The law of limitation applies in the following cases:

(1) When any property has gone through three lives in order it cannot be recovered so that if any property is held possession of, even though unlawfully, by the three ancestors of the father of the present possessor, it cannot be taken away from him.[2]

(2) Should the father, grandfather and great grandfather of a man be alive and he be in possession of the property, the calculation is to be made in the following manner:[3]

(i) possession by him for 30 years is to be taken as possession extending over one generation,

(ii) possession for twice the above period (i.e. 60 years)—two generations,

(iii) possession for three times the above period (i.e. 90 years)—three generations,

(iv) possession for longer period than all the above is called possession of long standing.

(3) *Vyāsa*, however, says that if occupancy is proved during 20 years, unmolested by the owner, it is to be considered as possession of land during one generation, twice as much—during two, thrice as much—during three and under such circumstances proof of a fair title is not required.[4]

(4) The owner of a chattel shall not recover it after the lapse of ten years, if during that time, he being present, sees it enjoyed by others.[5]

(5) If the property of a person not being an idiot or a minor, is enjoyed by another in his presence, it is lost to him by the law of reason of adverse possession.[6]

1. Ibid.
2. *Nārada*, I, 91; *Bṛhaspati*, IX, 26-27.
3. *Bṛhaspati*, IX, 23-24.
4. Colebrooke Digest, IV, CCCXCV, p. 144.
5. *Manu*, VIII, 147; *Nārada*, I, 79; *Gautama*, XII, 37; *Yājñavalkya*, II, 24; *Vaśiṣtha*, XVI, 17
   तत्र भुक्तानुमुक्तदशवर्षम् ।
6. *Manu*, VIII, 148; *Nārada*, I, 80.

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(6) Pledges and the rest, but not the property of a woman and of the king are lost to the owner if they have been enjoyed in his presence for 20 years.

(7) *Manu* lays down:[1]

> Three years let the king detain the property of which no owner appears after a distinct proclamation. The owner appearing within the three years may take it but after that term the king may confiscate it.

Legislation for Sale and Purchase

At the outset, the owner of the lost thing brings his case against the purchaser, the person who is then in possession of the thing. The latter is either to prove a bonafide purchase for value or to produce the seller. If the seller is produced the buyer is no longer disturbed, and the real contest then ensues between the owner and the seller, in other words they are to interplead in respect of the subject-matter of dispute.

The buyer is to prove his public purchase by honest and credible witnesses. If he cannot produce the seller it was necessary for him to prove a fair purchase. And if he does so he shall not be blamed by the king.[2]

If the seller be produced, the purchaser shall by no means be condemned for then the law suit must be continued between the owner of the thing lost and the seller.[3]

Nārada says:[4] "Let not the purchaser conceal the man from whom he purchased, on that man depends his own justification, if he acts otherwise, his crime to hold equal and he shall suffer the same punishment."

Marichi remarks on this aspect of litigation and says:[5]

> If a purchase be made by day before a public assembly of traders, with the knowledge of the king's officers, the purchaser is justified and acquires the absolute property.

1. *Manu*, VIII, 30
   प्रणष्टस्वामिकं रिक्थं राजा त्र्यब्दं निधापयेत् ।
   अर्वाक् त्र्यब्दाद्धरेत्स्वामी परेण नृपतिर्हरेत् ॥
2. Colebrooke Digest, II, p. 102.
3. Colebrooke Digest, II, p. 103.
4. Ibid., p. 107.
5. Ibid., p. 111.

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But if he cannot produce the seller, his dwelling being unknown, the loss shall be borne equally by the buyer and by the former owners who had lost the thing.

Bṛhaspati has given the following two valuable rulings about sale and purchase transactions and the resultant litigation:[1]

(1) If a purchase be made before a public assembly of traders with the knowledge of the king's officers but from a seller whose dwelling place is unknown, or if a claim be made after the death of the seller though known, the owner of the thing may recover his own property on paying half the price given; half the value is lost to each of them; such must be the decision.

(2) The following purchases to be fraudulent—
(a) which is made at a very low price,
(b) transactions made in a private apartment,
(c) purchase done in a place out of the town,
(d) purchase made by night,
(e) in a situation where the bargain cannot be overheard,
(f) purchases made from a man not known to be honest.

Legislation for Mortgage

Mortgage is a loan upon land or other property as security for the performance of some obligation, to become void on such performance. The law of mortgage was quite known. The mortgagee's loan was declared and he could enforce payment of the loan by the sale of the mortgaged property. The loan could not be defeated by any subsequent alienation.

For regulating suits of this nature, *Bṛhaspati* lays down the regulation mentioned below:

(1) When a house or a field has been mortgaged for use and the period for which the mortgage has been created, has not expired, the mortgagor cannot redeem nor can the mortgagee sue to receive his money. There is no cause of action to either party and a suit, if brought, is premature.[2]

1. *Bṛhaspati*, XIII, 9, 10.
2. *Bṛhaspati*, XI, 32.

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(2) When the due date has expired, both parties are at liberty to sue. But this does not prevent them from coming to an amicable settlement even before the stipulated period has elapsed.[1]

(3) Where a field has been mortgaged to two creditors at the same time, it shall belong to that mortgagee who was the first to obtain possession of it. If both have possessed it for an equal time, it shall be held in common by them. The same rule is ordained in the case of a gift or a sale.[2]

Legislation on husband-wife relationship

According to the *Hindus*, marriage is not merely a civil contract, it is rather a sacrament. The tie of marriage is sacred. The highest ideal of marriage is an ever lasting union in which the wife is strictly enjoined to obey and serve her husband. Concrete examples of devoted *Hindu* wives are *Sītā* and *Sāvitrī* whose ideals have not been forgotten even in these degenerate days. They preserve peace in a *Hindu* family even under various vicissitudes of fortunes. No other community of the world ever attributed a higher sanctity to marriage than the *Hindus*.

These ideals, of course, cannot be expected from everybody and therefore the *Hindu* law-givers gave different rules for those husbands and wives who did not come up to the highest standard and ideal. There are circumstances of very special nature wherein this sacred marriage tie can be dissolved and female or male partners may be permitted to remarry.

According to *Manu*[3] and others the husband has to guard the wife from the approaches of other men in order to ensure the purity of the issue and by guarding her the husband guards his reputation, family soul and his *dharma*, since a woman gives birth to a son similar to the male with whom she consorts or on whom she sets her heart during the days after the monthly illness.

1. *Bṛhaspati*, XI, 33.
2. Ibid., 34-35.
3. *Manu*, IX, 7, 9

स्वां प्रसूतिं चरित्रं च कुलमात्मानमेव च । स्वं च धर्मं प्रयत्नेन जायां रक्षन्हि रक्षति ॥
यादृशं भजते हि स्त्री सुतं सूते तथाविधम् । तस्मात्प्रजाविशुद्ध्यर्थं स्त्रियं रक्षेत्प्रयत्नतः ॥

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Husband is the legal guardian of the person and property of his wife. The primary duty of a wife is to serve her husband and to remain associated with him in the discharge of all duties—secular, religious and spiritual. A complete unity is the consummation of marriage. *Baudhāyana*, while commenting on this husband-wife relationship, lays down to be the sacred duty of the husband to have conjugal cohabitation with his wife. One who violates this duty is guilty of foeticide.

Contemporary *Hindu* law-givers of repute have given very interesting opinions about the tutelage of women. In chapter IX, 1, *Manu* promises that he will dilate upon the obligatory duties of man and wife whether they are staying together or apart. *Manu* says that the first duty of the husband and the males in his family is to keep women dependent and under their control if they become attached to a life of pleasure and *Nārada*[1] states that even women of good family come to ruin by independence. In the words of *Manu*:[2]

> Women must, day and night, be kept under subjugation by their male relations and if they give themselves up to sensual pleasures they must be restrained therefrom and kept under control. They should not be left free to act as they like, in regard to morality, wealth and pleasure. Whenever they desire to employ their wealth in acts of righteousness and the like, they should obtain the permission of their guardians—the husband or other male relations according to her age.

He further says:[3]

> Mendicants, bards, performers of the initiatory ceremony of a *Vedic* sacrifice and artisans are not prohibited from speaking to married women.

1. *Nārada*. XVI, 30.
2. *Manu*, IX, 2
   अस्वतन्त्राः स्त्रियः कार्याः पुरुषैः स्वैर्दिवानिशम् ।
   विषयेषु च सज्जन्त्यः संस्थाप्या आत्मनो वशे ।।
3. Ibid., VIII, 360
   भिक्षुका वनिदनश्चैव दीक्षिताः कारवस्तथा ।
   संभाषणं सह स्त्रीभिः कुर्युरप्रतिवारिताः ।।

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He, however, permits conversation with the wives of actors, singers and those who live on the intrigues of their own wives since such men encourage or allow their wives to hold criminal intercourse with others although he prohibits secret conversation with such women.[1] *Manu* says:[2]

> A female whether she be a girl or a young woman or an aged one, should do nothing independently even in her own home.

Manu,[3] *Yājñavalkya*[4] and *Viṣṇu*[5] are all unanimous on the point that women must be kept under subjugation and control always. They say that her father protects her in childhood, her husband protects her in youth, her sons protect her in old age—a woman is never fit to be independent.

About religious aspects of a woman's life *Manu* remarks:[6]

> Women need have no sacrifice, penance or fasting other than serving their husbands, as by that means alone they are exalted in heaven.

This has been supported by *Viṣṇu* also.[7] Here we must note the advice of *Ṛṣi Atri*, who lays down:[8]

The woman who in the life time of her husband prac-

1. *Manu*, VIII, 362, 363
   नैष चारणदारेषु विधिनात्मोपजीविषु ।
   स यन्ति हि ते नारी निर्गूढाश्चारयन्ति च ।।
   किंचिदेव तु दाप्यः स्यात्संभाषां ताभिराचरन् ।
   प्रैष्यासु चैकभक्तासु रहः प्रव्रजितासु च ।।
2. Ibid., V, 147
   बालया वा युवत्या वा वृद्धया वाऽपियोषिता ।
   न स्वातन्त्र्येण कर्त्तव्यं किञ्चित्कार्यं गृहेष्वपि ।।
3. Ibid., IX, 3
   पिता रक्षति कौमारे भर्ता रक्षति यौवने ।
   रक्षन्ति स्थाविरे पुत्रा न स्त्री स्वातन्त्र्यमर्हति ।।
4. *Yājñavalkya*, I, 85
   रक्षेत्कन्यां पिता विन्नां पतिः पुत्रास्तु वार्धके ।
   अभावे ज्ञातयस्तेषां न स्वातन्त्र्यं क्वचित्स्त्रियाः ।।
5. *Viṣṇu*, XXV, 13.
6. *Manu*, V, 155.
7. *Viṣṇu*, XXV, 15.
8. Quoted by Kanjilal, Jadunath, HLP, Calcutta, 1913, p. 103.

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tises penances or vows by fasting, shortens the life of her husband and is consigned to hell. The woman desirous of bathing in sacred water may as well drink the water in which her husband's feet are washed.

Bṛhaspati says:[1]

A father who does not give his daughter in marriage in proper time, a husband who does not cohabit with his wife at the time favourable for procreation and a son who does not support his mother, deserve contempt and shall be punished according to law.

Nārada has supported the above view of *Bṛhaspati* in the following words:[2]

He who does not give such a maiden in marriage commits the crime of killing an embryo as many times as her period of menstruation passes by without her having a husband. Therefore a father must give his daughter in marriage once (for all), as soon as the signs of maturing become apparent. By acting otherwise he would commit a heavy crime such is the rule settled among the virtuous.

Manu regards the wife as the half of her husband though not the betterhalf. He says that dividing his own body *Prajāpati* became half male and half female.[3] So according to him man does not make a whole by himself alone but attains completion in the company of his wife. The husband is one with his wife.[4]

Yājñavalkya has also clearly explained the psychological unity of the husband and the wife. He states that the man who was originally one cleft himself into two because he felt no pleasure in loneliness and wished for second, these two became the husband and the wife.[5]

1. *Bṛhaspati*, XXIV, 3.
2. *Nārada*, XII, 26-27.
3. *Manu*, I, 32
   द्विधा कृत्वाऽऽत्मनो देहमर्धेन पुरुषोऽभवत् ।
   अर्धेन नारी तस्यां स विराजमसृजत्प्रभुः ॥
4. Ibid., IX, 45
   एतवानेव पुरुषो यज्जायाऽऽत्मा प्रजेति ह ।
   विप्राः प्राहुस्तथा चैतद्यो भर्ता सा स्मृताङ्गना ॥
5. Quoted by R.M. Das in *Women in Manu and his seven commentators*, Varanasi, 1964, p. 162.

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The unity between the husband and the wife is of a permanent nature, it can never come to an end. *Manu* says:[1]

> Neither by sale nor by repudiation is a wife released from her husband, such we know that law to which the lord of creatures made of old.

A wife, according to *Manu*,[2] is obtained from the gods; she is not received like cattle and gold in the market. She is obtainable only as the result of man's meritorious acts done in his previous life and not otherwise. The wife is regarded as the most beloved person of a man. At the time of taking an oath in the court of law one was required to touch the head of his wife. It was believed that if there were the least doubt in his mind he would not swear by his wife. Further the wife is one of those nearest and dearest persons by defaming whom a man becomes liable to a fine of one hundred *paṇas* in the court of law. The husband is not to cast off his wife unless she be guilty of a crime causing loss of caste; if he casts her off, he shall be fined by the king six hundred *paṇas*. Ordinarily the husband is required to avoid even exchange of hot words with his wife.[3] There is a fairly good amount of reciprocity between the husband and the wife—the husband suffers for the sins of his wife and vice-versa.[4] The wife also acquires the qualities of her husband as does the river those of the sea. There was a tendency to excuse the wife even though she was guilty. This might be gathered from the statement of *Manu*

1. *Manu*, IX, 46
   न निष्क्रयविसर्गाभ्यां भर्तुर्भार्या विमुच्यते ।
   एवं धर्मं विजानीमः प्राक्प्रजापतिनिर्मितम् ॥
2. Ibid., VIII, 275, 389
   मातरं पितरं जायां भ्रातरं तनयं गुरूम् ।
   आक्षारय शतं दाप्यः पन्थानं चाददद्गुरोः ॥
   न माता न पिता न स्त्री न पुत्रस्त्यागमर्हति ।
   त्यजन्नपतितानेतानाज्ञा दण्डयः शतानि षट् ॥
3. Ibid., IV, 180
   मातापितृभ्यां जामीभिर्भ्रात्रा पुत्रेण भार्यया ।
   दुहित्रा दासवर्गेण विवादं न समाचरेत् ॥
4. Ibid., VIII, 317
   अन्नादे भ्रूणहा मार्ष्टि पत्यौ भार्यापचारिणी ।
   गुरौ शिष्यश्च याज्यश्च स्तेनो राजनिकिल्बिषम् ॥

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that the king should not exempt from punishment even his wife who might be accused of having done any wrong.[1]

Manu declares that mutual fidelity till death is the gist of the highest dharma for the husband and the wife and says that men and women, united in marriage should constantly so exert themselves that they may not be disunited and may not violate their mutual fidelity.[2] He says:[3]

> To be mothers were women created, and to be fathers, men; religious rites, therefore, are ordained in the *Vedas* to be performed by the husband together with his wife. The wife is required to serve, obey and honour her husband. Him, to whom her father may give her or her brother, with the father's permission, she shall obey as long as he lives and when he is dead she must not insult his memory. A faithful wife who desires to dwell in this as well as in the next world with her husband must never do anything that might displease him who took her hand, whether he be alive or dead.[4]

Manu's eulogy of the husband is due to the fact that he gives pleasure to the wife in both the worlds. He says: "The husband who wedded her with sacred texts always gives happiness to her both in season and out of season, in this world

1. *Manu*, VIII, 355
   यस्त्वनाक्षरितः पूर्वमभिमाषेत कारणात् ।
   न दोष प्राप्नुयात्किंचिन्न हि तस्य व्यतिक्रमः ॥
2. Ibid., IX, 101-102
   अन्योन्यस्याव्यभिचारो भवेदामरणान्तिकः ।
   एष धर्मः समासेन ज्ञेयः स्त्रीपुंसयोः परः ॥
   तथा नित्यंयतेयातां स्त्री पुंसौ तु कृतक्रियौ ।
   यथा नाभिचरेतां तौ वियुक्ताविंतरेतरम् ॥
3. Ibid., IX, 96
   प्रजनार्थं स्त्रियः सृष्टाः सन्तानार्थं च मानवाः ।
   तस्मात्साधारणो धर्मः श्रुतौ पत्न्या सहोदितः ॥
4. Ibid., V, 151, 156
   यस्यै दद्यात्पिता त्वेनां भ्राता वाऽनुमतेः पितुः ।
   तं शुश्रूषेत जीवन्तं संस्थितं च न लङ्घयेत् ॥
   पाणिग्राहस्य साध्वी स्त्री जीवतो वा मृतस्य वा ।
   पतिलोकमभीप्सन्ती नाचरेत्किञ्चिदप्रियम् ॥

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and in the next world."[1] He further proceeds to describe the rewards a wife gets for her singular obedience to her lord and also the punishments she has to suffer for disobeying him. As regards the rewards he says:[2]

> She, who controlling her thoughts, words and deeds, never slights her husband, resides after death with him in heaven and is called a virtuous wife. In reward of such conduct a female who controls her thought, speech and actions gains in this life highest renown and in the next world a place near her husband.

Yājñavalkya also says:[3]

> She, who is devoted to her husband's welfare, is well-behaved and has her senses under her control, attains fame in this world, and the supreme state after death.

Elsewhere he has stated:[4]

> Women should act according to the words of their husbands, this being their highest duty.

So far as the punishments for disobeying the husband are concerned, *Manu* says:[5]

> By violating her duty towards her husband a wife is discharged in this world, after death she enters the womb of

1. *Manu*, V, 153
   अनुतावृतुकाले च मन्त्रसंस्कारकृत्पतिः ।
   सुखस्य नित्य दातेह परलोके च योषितः ॥
2. Ibid., V, 165-166
   पतिं या नाभिचरति मनोवाग्देहसंयुता ।
   सा भर्तृलोकमाप्नोति सद्भिः साध्वीति चोच्यते ॥
   अनेन नारीवृत्तेन मनोवाग्देहसंयता ।
   इहाग्न्यां कीर्तिमाप्नोति पतिलोके परत्र च ॥
3. *Yājñavalkya*, I, 87
   पतिप्रियहिते युक्ता स्वाचारा विजितेन्द्रिया ।
   सेह कीर्तिमवाप्नोति प्रेत्य चानुत्तमां गतिम् ॥
4. Ibid., I, 77
   स्त्रीभिर्भर्तृवचः कार्यमेष धर्मः परः स्त्रियाः ।
   आ शुद्धेः संप्रतीक्ष्यो हि महापातक दूषितः ॥
5. *Manu*, V, 164
   व्यभिचारा तु भर्तुः स्त्री लोके प्राप्नोति निन्द्यताम् ।
   शृगालयोनिं प्राप्नोति पापरोगैश्च पीड्यते ॥

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a jackal and is tormented by foul disease as a punishment for her sins.

Bṛhaspati has given the following guidelines for a wife:[1]

Let not a woman reside in another man's house separated from her father, husband or sons, by (giving way to) malicious propensities, particularly, she is sure to lose her reputation.

Rising before (others), paying reverence to the elders of the family, preparing food and condiments, and using a low seat and bed, thus have the duties of women been declared.

Drinking (spirituous liquor), rambling abroad, sleeping by day, and neglect of her daily duties are faults, disgracing a woman.

That wife is declared to be devoted to her husband who is afflicted when he is afflicted, pleased when he is happy, squalid and languid when he is absent and who dies when he dies.

When her husband is absent, a woman must avoid decorating herself, as well as dancing, singing, looking on at public spectacles of festivals, and using meat or intoxicating drinks.

A wife is considered half the body (of her husband), equally sharing the result of his good or wicked deeds, whether she ascends the pile after him or chooses to survive him leading a virtuous life, she promotes the welfare of her husband.

From the above statements of *Bṛhaspati*, it is clear that a wife deserting a husband and a husband deserting a wife for no justifiable cause were punished according to law. They were strictly enjoined to have conjugal cohabitation specially at a time when procreation was possible. Implicit obedience on the part of the husband was inculcated. The king would interfere when there was any flagrant violation of duties on the part of either of them.

1. *Bṛhaspati*, XXIV, 5-9, 11.

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(A) *Desertion by husband*

A chaste and faithful wife is, under all circumstances, entitled to maintenance. The husband cannot deprive her of that right. If he deserts or neglects her, she can enforce that right against him. *Hindu* law-givers have generally discouraged desertion.

Yājñavalkya says:[1]

> If the wife is obedient, active, agreeable in manners and has male issue, the husband marrying again is to be compelled by the king to give her a one third share of his property and if he be poor, she will be entitled to maintenance.

Nārada says:[2]

> If a man deserts a wife who is obedient, pleasant-spoken, skilful, virtuous and the mother of male issue, the king shall inflict severe punishment on him, if he neglects his duty towards his wife.

Viṣṇu lays down:[3]

> The man who deserts a faultless wife shall suffer the same punishment as a thief.

Devala writes:[4]

> No atonement is ordained for that man who forsakes his own wife through delusion of mind deserting her illegally; nor for him, who forsakes his virtuous son.

He recommends further that a man may exclude from his bed or from pilgrimage, a wife who is afflicted with leprosy, degraded from her class, barren, or insane, whose courses are stopped, or who is wicked—but he may not exclude her from all business.[5]

1. *Yājñavalkya*, I, 76
   आज्ञा संपादिनीं दक्षां वीरसूं प्रियवादिनीम् ।
   त्यजन्दाप्यस्तृतीयांशमद्रव्यो भरणं स्त्रिया: ॥
2. *Nārada*, XII, 95.
3. *Viṣṇu*, V, 163.
4. Colebrooke Digest, II, p. 529.
5. Ibid.

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Āpastaṁba gives the ruling that the husband who forsakes his wife unjustly shall put on ass's skin with the hair turned outside and beg in seven houses saying—'give alms to him who forsook his wife'. In this way he shall have his livelihood for six months.[1]

We come across a term *adhivedana* in *Manu-Smṛti* which means 'forsaking a wife and taking another'. It implies that a wife might in certain cases be deprived of her conjugal rights which were transferred to another wife taken by the man later on. *Manu* allows supersession. He says:[2]

> She, who drinks spirituous liquor, is of bad conduct, diseased, mischievous or wasteful may at any time be superseded by another wife.

In this verse the supersession of that wife is recommended who is devoid of noble qualities and virtues and besides, has got certain positive defects in her. Such a wife is unable to participate in the religious activities of her husband, cannot look after the household work in a proper way and due to her bad behaviour and conduct cannot keep her husband pleased. On account of all these defects in her she does not deserve the privileges of a wife and is thus dethroned from her position.

Manu says:[3]

> The barren wife shall be superseded in the eighth year; in the tenth, whose children die off; in the eleventh, she who is bearing daughters only; but immediately she who talks harshly.

The main principle behind the supersession of the first three types of wife is the anxiety for having a son. A son was absolutely necessary for offering the prescribed oblations to the ancestors and to secure a place for them in heaven, so *Manu* allows the husband taking a second wife if the first one is unable to give birth to a son. Eight years at least had to elapse before barrenness could be confirmed.

He also says that a sharp tongued wife speaking unpleasant things is to be immediately superseded. This has been regard-

1. *Āpastaṁba*, I, 10, 20, 19.
2. *Manu*, IX, 80.
3. Ibid., IX, 81.

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ed by some modern writers as a monstrous principle. He lays great emphasis on the fact that the wife should not be quarrelsome or even harsh in speech. If she is quarrelsome none of the duties of the married life could be properly performed nor could the pleasures of life be enjoyed in her company, and also there could be no peace in the family. So if the wife were harsh in speech, she could not be able to pull on well with others and everything in the house could go wrong and the religious as well as the daily duties of the man would not be performed properly.

Manu's emphasis on the good nature and good conduct of the wife is so great that he says:[1]

> Even a sick wife who is kind to her husband and virtuous in her conduct must be superseded only with her own consent and must never be disgraced.

Thus he is not in favour of superseding a sickly wife if she is well-behaved towards her husband. Even if there are some defects in the behaviour of the wife, she is not to be cast off. *Manu* says—'for one year let a husband bear with a wife who hates him, but after the lapse of a year, let him deprive her of her property and cease to cohabit with her'.[2] This rule appears to apply to a case where the husband is perfectly good and still the wife hates him.

(B) *Desertion by wife*

The text of *Manu* in regard to this point is both exhaustive and interesting:[3]

> She, who shows aversion towards a mad or outcaste husband, an eunuch, one destitute of virile power or one afflicted

1. *Manu*, IX, 82
   या रोगिणी स्यात्तु हिता सम्पन्ना चैव शीलता ।
   सानुज्ञाप्याधिवेत्तव्या नावमान्या च कर्हिचित् ॥
2. Ibid., IX, 77
   संवत्सरं प्रतीक्षेत द्विषन्तीं योषितं पतिः ।
   ऊर्ध्वं संवत्सरात्त्वेनां दायं हृत्वा न संवसेत् ॥
3. Ibid., XI, 79
   उन्मत्तं पतितं क्लीबमबीजं पापरोगिणम् ।
   न त्यागोऽस्ति द्विषन्त्याश्च न च दायापवर्तनम् ॥

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with such diseases as are deemed punishments for sins, shall neither be cast off nor be deprived of her property. It is not unlikely or unnatural that a wife should entertain aversion towards a husband who is mad, degraded, impotent or afflicted with foul diseases. A wife who does not show any such aversion is much admired but she is not caste off or deprived of her property if she be otherwise. A husband under such circumstances cannot seriously protest against judicial separation.

Manu has given the following laws:[1]

(1) A wife, who being superseded, departs in anger from her husband's house, must either be instantly confined or cast off in the presence of kinsmen.

(2) If a wife proud of the merits of her kinsmen, oversteps her lord, the king shall cause her to be devoured by dogs in a conspicuous place.[2]

Parāśara[3] and *Nārada*[4] have given the five following circumstances in which a woman may be justified in taking another husband:

(1) When her husband is lost,
(2) When her husband is dead,
(3) When he has become a religious ascetic,
(4) When he is impotent,
(5) When he has been degraded by being expelled from caste.

Nārada has prescribed the following periods for a woman to wait before taking another husband:[5]

(1) For a *Brāhmaṇa* woman — eight years, if she has issue.
(2) For a *Kshatriya* woman — six years, if she has issue.
(3) For a *Vaiśya* woman — four years, if she has issue.

1. *Manu*, IX, 83
   अधिविन्ना तु या नारी निर्गच्छेद्रुषिता गृहात् ।
   सा सद्यः संनिरोद्धव्या त्याज्या वा कुलसंनिधौ ॥
2. Ibid., VIII, 371
   भर्तारं लङ्घयेद्या तु स्त्री ज्ञातिगुणदर्पिता ।
   तां श्वभिः खादयेद्राजा संस्थाने बहुसंस्थिते ॥
3. *Parāśara*, IV, 28
4. *Nārada*, XII, 97
5. Ibid., XII, 98-100

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(4) For a *Śūdra* woman — no definite period of waiting has been prescribed.

Further *Nārada* says that the above rules have been laid down by the creator of the world for those cases where a man has disappeared.[1] No offence is imputed to a woman if she goes to love with another man after the fixed period has elapsed. *Manu*[2] commenting on the above recommendation of *Parāśara* and *Nārada* observes that a woman under special circumstances could forsake her former husband and many another. From other texts, it would appear the absence of the husband would not be a justifying cause for the wife to marry again. The time specified for her to wait for her husband simply meant that after the lapse of time she could seek her absent husband and join with him and not that she was permitted to marry again.

This observation of *Manu* finds support of *Vaśiṣtha*[3] and *Gautama*.[4] According to *Vaśiṣtha*, the wife of an emigrant shall wait for five years. After five years (have passed) she may go (to seek) her husband. If for reasons connected with spiritual or with money matters she be unwilling to leave her home, she must act in the same manner as if (her husband were) dead. In this matter a wife of the *Brāhmaṇa* caste who has issue (shall wait) five years, and one who has no issue four years, a wife of the *Kshatriya* caste who has issue, five years, and who has no issue, three years, a wife of the *Vaiśya*

1. *Nārada*, XII, 101.
2. *Manu*, IX, 76

   प्रोषितो धर्मकार्यार्थं प्रतीक्ष्योष्टौ नरः समाः ।
   विद्यार्थं षट्यशोर्थं वा कामार्थं त्रीस्तु वत्सरान् ॥
3. *Vaśiṣtha*, XVIII, 75-80

   प्रोषितपत्नी पञ्च वर्षाण्युपासीत ।
   ऊर्ध्वं पञ्चभ्यो वर्षेभ्यो भर्तृसकाशं गच्छेत् ॥
   यदि धर्मार्थाभ्यां प्रवासं प्रत्यनुकामा न स्याद्यथा
   प्रेत एवं वर्तितव्यं स्यात् ॥
   एवं ब्राह्मणी पञ्च प्रजाता प्रजाता चत्वारि राजन्या
   प्रजाता पञ्च प्रजाता त्रीणि वैश्या प्रजाता चत्वार्य-
   प्रजाता द्वे शूद्रा प्रजाता त्रीण्य प्रजातैकम् ॥
   अत ऊर्ध्वं समानार्थजन्म पिण्डोदक गोत्राणां पूर्वं पूर्वो गरीयान् ॥
   न तु खलु कुलीने विद्यमाने परगामिनी स्यात् ॥
4. *Gautama*, XVIII, 15, 17.

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caste who has issue, four years, and one who has no issue, two years, a wife of the *Śūdra* caste who has issue, three years and one who has no issue, one year. After that among those who are united (with her husband) in interest, or by birth, or by the funeral cake, or by libations of water, or by descent from the same family, each earlier named person is more venerable than the following ones. But while a member of her family is living, she shall certainly not go to a stranger.

(C) *Adultery*

It is adultery to address the wife of another man at a *Tīrtha*, out of the village, in a forest, garden, park, at the confluence of rivers, or at a *Ghāṭa*, to meet her in an unreasonable hour or place, to bestow attentions on a woman, offer her presents, romp with her, touch her ornaments and dress and sit with her on the same bed, to touch a woman in a place which ought not to be touched or allow oneself to be touched in such a spot (though done with mutual consent).[1]

'An adulterer is proved to be so by being caught in such acts as playing with the hair of another's wife, an incendiary by being caught with a firebrand in his hand (near the house set on fire), a murderer by being found (near the murdered man) armed and a thief when caught with some of the articles stolen in his possession', says *Śaṅkhalikhita*.[2]

Kauṭilya[3] and *Yājñavalkya*[4] similarly say that adultery may be inferred from (the man and woman) being caught in the act of dalliance with the hair or from the signs left (such as marks of nails or teeth on the lips, cheek etc.) after carnal enjoyment or from the admission of the woman concerned (or of both). *Yājñavalkya* also appears to hold the same view when he says:[5]

1. *Manu*, VIII, 356-368; cf. *Nārada*, XII, 62-69.
2. *Śaṅkhalikhita* quoted by *Parāśara Mādhavīya*, III, 119.
केशाकेशिसङ्ग्रहणात्पारजायिक उल्काहस्तोऽग्निदः शस्त्रपाणिर्धातुकोलोचहस्तश्चौरः ।
3. *Kauṭilya*, IV, 12
केशाकेशिकं संग्रहणम् । उपलिङ्गनाद्वाशरीरोपभोगानंताज्जोतेभ्यः स्त्रीवचनाद्वा ॥
4. *Yājñavalkya*, II, 283
पुमान्संग्रहणे ग्राह्यः केशाकेशिपरस्त्रिया ।
सद्यो वा कामजैश्चिह्नैः प्रतिपत्तौद्वयोस्तथा ॥
5. Ibid., II, 284
नीवीस्तन प्रावरणसक्थि केशावमर्शनम् ।
अदेशकाल संभाषं सहैकासनमेव च ॥

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> Touching of cloth knots, of the cover over the breast or of her thighs or conversing with her at improper places and times and sitting with her on the same bed—all this is adultery.

Touching of each other's body even with mutual consent is regarded as adultery. According to *Kauṭilya* catching hold of each other's hair also is adultery.[1] This is most probably due to the fact that it would stir up sexual passion which would lead to actual intercourse. *Gautama* prescribes that a wife who spoils her chastity must undergo a penance, but she should be kept under guard and given food.[2] *Yājñavalkya* declares:[3]

> An adulterous wife should be deprived of her authority over the servants, should be made to wear dirty clothes, should be given food just sufficient to enable her to live, should be treated with scorn and be made to lie on the ground; she becomes pure when she has her monthly period, but if she conceives during the adulterous intercourse she should be abandoned.

Intercourse is permitted with a wanton woman (not belonging to the *Brāhmaṇa* caste), a prostitute, a female slave or a female not restrained by her master when these women belong to a caste lower than himself. But it is criminal to have intercourse with another's kept mistress, such women, though intercourse with them is not in general forbidden, must not be approached, because they belong to another man.[4]

Law-givers have given the following examples of types of offences coming within the scope of adultery and have prescribed punishments for them. In the case of adultery and rape the caste of the offender and of the woman concerned made great difference in the punishment awarded. For adultery with a woman of the same caste, *Yājñavalkya* prescribed the highest amercement, the middling one when the paramour was of a higher caste, but if the male be of a lower caste than the

1. *Kauṭilya*, III, 3.
2. *Gautama*, XXII, 35.
3. *Yājñavalkya*, I, 70-72.
4. *Nārada*, XII, 79.

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woman, the male offender was sentenced to death and the woman had her ears cut off.[1]

Vaśiṣtha[2] prescribed for a *Śūdra*, *Vaiśya* or *Kshatriya* guilty of adultery with a *Brāhmaṇa* woman the horrible punishment of being burnt to death after being respectively covered with *Viraṇa* grass, with red *darbhā* and *Sāra* leaves and similar punishment for a *Śūdra* paramour of a *Kshatriya* or *Vaiśya* woman and for a *Vaiśya* paramour of a *Kshatriya* woman.[3] The consenting woman (adulteress) was, according to *Vaśiṣtha*,[4] to be shaved, to have her head anointed with clarified butter and to be paraded on an ass and left to die on the great journey while, according to *Gautama*[5] and *Manu*,[6] an adulteress vain of her charms or the wealth of her parents, was to be openly devoured by dogs if the paramour was a man of lower caste.

1. *Yājñavalkya*, II, 286.
2. *Vaśiṣtha*, XXI, 1-5
   शूद्रश्चेद्ब्राह्मणीमभिगच्छेद्वीरणैर्वेष्टयित्वा शूद्रमग्नौ प्रास्येद्ब्राह्मण्याः
   शिरसि वपनं कारयित्वा सर्पिषा समभ्यज्य नग्नां कृष्णरवरमारोप्य
   महापथमनुसंव्राजयेत्पूता भवतीति विज्ञायते ॥
   वैश्यश्चेद्ब्राह्मणीमभिगच्छेल्लोहितदर्भैर्वेष्टयित्वा वैश्यमग्नौ प्रास्येद्ब्राह्मण्याः
   शिरसि वपनं कारयित्वा सर्पिषा समभ्यज्य नग्नां गौरखरमारोप्य
   महापथ मनुसंव्राजयेत्पूता भवतीति विज्ञायते ॥
   राजन्यश्चेद्ब्राह्मणीमभिगच्छेच्छर पत्रैर्वेष्ट यित्वा राजन्यभग्नौ प्रास्येद्ब्राह्मण्याः
   शिरसि वपनं कारयित्वा सर्पिषा समभ्यज्य नग्नांश्वेतखरपारोप्य
   महापथभनु संव्राजयेत्पूता भवतीति विज्ञायते ॥
   एवं वैश्यो राजन्यायाम् ॥
   शूद्रश्च राजन्यावैश्ययोः ॥
3. *Vaśiṣtha*, XXI, 1-3.
4. Ibid.
5. *Gautama*, XXIII, 14.
6. *Manu*, VIII, 371.

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ADULTERY

Offence	*Punishment*	*Reference*
Committing adultery with the wives of others	Banishment after being marked with punishment causing terror	*Manu*, VIII, 352
	Persons other than Brāhmaṇas should suffer death	*Manu*, VIII, 359
Exception: It is no offence to have intercourse with a consenting woman when she has been forsaken by her husband without any fault on her part, or when her husband is impotent or consumptive.		*Nārada*, XII, 61
A man formerly accused of adultery secretly conversing with another man's wife	Fine of 250 *paṇas*	*Manu*, VIII, 354
Note: A man not previously accused can speak for some reasonable cause.		*Manu*, VIII, 355
Conversing with another's wife in spite of prohibition	Fine of 1 *suvarṇa*	*Manu*, VIII, 361
Note: Not applicable to the wives of actors, singers who		*Manu*, VIII, 362

Offence	*Punishment*	*Reference*
live on the intrigues of their own wives.		
Secretly conversing with women, female slaves or ascetics	Small fine	*Manu*, VIII, 363
Exceptions: Mendicants, bards, men who have performed the initiatory ceremony of a vedic sacrifice and artisans are not prohibited from speaking to married women.		*Manu*, VIII, 360
Violating an unwilling maiden	Corporal punishment	*Manu*, VIII, 364
Forcibly contaminating a maiden through insolence	Two fingers to be cut off and fine of 600 *paṇas*	*Manu*, VIII, 367 *Nārada*, XIII, 71
Forcibly contaminating a maiden between persons of equal caste	Fine of 200 *paṇas*	*Manu*, VIII, 368
A man of low caste making love to a maiden of the highest caste	Death and confiscation of property	*Manu*, VIII, 364
A damsel polluting another damsel	Fine of 200 *paṇas* and double her nuptial fee, and ten lashes with a rod	*Manu*, VIII, 369

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Offence	*Punishment*	*Reference*
A woman polluting a damsel	Head to be shaved or two fingers to be cut off and made to ride through the town on a donkey	*Manu*, VIII, 370
A wife, proud of greatness of her relatives or of her own excellence violating the duty to her husband	Female offender to be devoured by dogs in a frequented place while the male offender to be burnt on a red hot iron bed until he is burnt to death	*Manu*, VIII, 371 372 *Viṣṇu*, V, 18
A married woman committing adultery	Head to be shaved, made to lie on a low couch, given bad food and engaged to remove sweepings	*Nārada*, XII, 91
Sensual intercourse with a woman of the		
(1) same caste	Fine of 1000 *paṇas*	*Viṣṇu* V, 40 *Nārada*, XII, 70
(2) lower caste	,, 500 ,,	*Viṣṇu*, V, 41 *Nārada*, XII, 70
(3) lowest caste	Death	*Viṣṇu*, V, 43 *Nārada*, XII, 70
A *Śūdra* having intercourse with a woman of the twice born caste when		

Offence	*Punishment*	*Reference*
(1) guarded	Forfeiture of every thing even of life	*Manu*, VIII, 734
(2) unguarded	Penis to be cut off and property forfeited	*Manu*, VIII, 374
A *Vaiśya* having intercourse with		
(a) *Brāhmaṇī* when		
(1) unguarded	Fine of 500 *paṇas*	*Manu*, VIII, 376
(2) guarded	Forfeiture of property and imprisonment for a year	*Manu*, VIII, 377
(b) *Kshatriyānī* unguarded or guarded	Fine of 500 *paṇas*	*Manu*, VIII, 382-384
(c) *Śūdrānī*	,, 1,000 ,,	
A *Kshatriya* having intercourse with		
(1) guarded Brāhmaṇī	Fine of 1,000 *paṇas* and to be shaved with ass's urine	*Manu*, VIII, 375
(2) guarded *Brāhmaṇī* (of eminent men)	To be burnt in a fire of dry grass	*Manu*, VIII, 377
(3) unguarded *Brāhmaṇī*	Fine of 1,000 *paṇas*	*Manu*, VIII, 376
(4) unguarded *Kshatriyānī*	Fine of 500 *paṇas* or to be shaved with donkey's urine	*Manu*, VIII, 384
(5) guarded *Vaiśyānī*	Fine of 1,000 *paṇas*	*Manu*, VIII, 382
(6) guarded *Śūdrānī*	,, 1,000 ,,	

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Offence	*Punishment*	*Reference*
A *Brāhmaṇa* having intercourse with		
(1) unwilling *Brāhmaṇī*	Fine of 1,000 *paṇas*	*Manu*, VIII, 378
(2) willing *Brāhmaṇī*	,, 500 ,,	*Manu*, VIII, 378
(3) guarded *Kshatriyānī* or *Vaiśyānī*	,, 1,000 ,,	*Manu*, VIII, 383
(4) unguarded *Kshatriyāṇī* or *Vaiśyānī*	,, 500 ,,	*Manu*, VIII, 385
(5) a woman of the lowest caste	,, 1,000 ,,	*Manu*, VIII, 385
Bestial crime with		
(1) cows	Fine of 500 *paṇas*	*Viṣṇu*, V, 42 *Nārada*, XII, 75
(2) other cattle	Fine of 1,000 *kārṣāpaṇas*	*Viṣṇu*, V, 44 *Nārada*, XII, 75

Notes : (1) For a second conviction within a year the fine in the above cases must be doubled.[1]

(2) Intercourse is permitted with a wanton woman (not belonging to the Brāhmaṇa caste), a prostitute, a female slave or a female not restrained by her master when these women belong to a caste lower than himself.[2]

(3) It is criminal to have intercourse with another's kept mistress.[3]

1. *Manu*, VIII, 373
   संवत्सरामिशस्तस्य दुष्टस्य द्विगुणो दमः ।
   व्रात्यया सह संवासे चाण्डाल्या तावदेव तु ॥

2. *Nārada*, XII, 78.

3. Ibid.

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APPENDIX I

The Trial of Chārudatta

(*Mrichhakaṭika*, Chap. IX)

The *Mrichhakaṭika* or the Earthen Cart is an ancient *Sanskrit* drama, in the IX Chapter of which is narrated the trial of *Chārudatta*, a *Brāhmaṇa* merchant of *Ujjayini* during the reign of king *Palaka*. To understand the case, a brief account of the plot ought to be given in the first instance. *Chārudatta* was a rich and prosperous merchant, who was loved and honoured by all for his noble character and singular liberalities. He had spent out his large fortune by private and public charities and was reduced to poverty. An accident brought him in contact with Basantasenā, a celebrated beauty of the town. She was an opulent courtesan, who was once pursued by *Śakara*, the king's licentious and foolish brother-in-law. She eluded the pursuit by entering the house of *Chārudatta* under cover of the darkness of the night. She left her ornaments with him for fear of being robbed of them, and returned to her house that very night. She had a slave girl named *Madanikā* with whom one *Sarbilaka* had fallen in love. In order to liberate her, he managed to steal *Basantasenā's* ornaments from *Chārudatta's* custody and brought them all to *Madanikā*.

She reproached him for his misconduct and recognising the ornaments as those of her mistress delivered them to her. She was pleased with her conduct and consented to their marriage.

Chārudatta, coming to know of the theft, sent his friend *Maitreya* to *Basantasenā* with a rich jewel, a necklace in exchange, pretending that he had lost them in gambling. She came to his house with the necklace, returned it to him, and at the same time showed him her ornaments, relating how she had come by them. She spent the night with him. They wanted to meet in his garden at the night following, and to

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this end, he left necessary instruction to his cartman. While she was preparing for the journey, *Chārudatta's* maid servant brought his infant son *Rohasena* all weeping to have a golden toy cart instead of an earthen one that was given him. *Basantasenā* learning the cause of his tears made over her ornaments to him, so that a golden cart might therewith be made for him.

The cart was now waiting ready for her. It so happened that at this time one *Āryyaka* who had been kept confined by the king for a prediction that he would overturn him and himself become the king in his stead, had managed to escape in the disguise of a woman, and being hotly pursued, secretly entered the cart intended for *Basantasenā*. The driver taking her to be Basantasenā started for the garden of *Chārudatta*.

In the meantime came another cart belonging to Śakara, intended to carry him home from his garden, and while there was commotion everywhere for the escape of *Āryyaka*, it stopped near the house of *Chārudatta*. Now *Basantasenā*, taking it to be the cart intended for her, got into it unperceived by the driver, and entered *Śakara's* garden to his presence to be surprise. He tried his best to induce her to consent to his lustful request, and finding her quite refractory throttled her and left her there, as he supposed, quite dead. She was saved by the care of a *Buddhist Bhikshu*, who carried her to a safe place.

When *Chārudatta* came to learn that *Basantasenā* had given her ornaments to his son, he made them over to his friend *Maitreya* with instructions to return them to her with thanks. He did not find *Basantasenā* in his garden and then went home disappointed.

Śakara, who had learnt from *Basantasenā* that she had meant to enter the garden of *Chārudatta*, now planned to bring forward an accusation of murder of *Basantasenā* for her ornaments against Chārudatta and actually lodged a complaint to that effect to the judge attended by a (*Śreṣṭhī*) merchant and a (*Kāyastha*) scribe. In an unguarded moment he said: "Some wretched mother's son has strangled *Basantasenā* by his hands, after entering the lonely garden, not I." The judge directed his attendants to write down the cause of action, and especially the words 'not I'. *Śakara* recovered his presence of mind and

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said that he meant to say—"I have seen all this." Thereupon he wiped away the writing with his foot.

It occurred to the judge that *Śakara* could not be the proper complainant in such a case, and accordingly the mother of *Basantasenā* was sent for. She was put forward as the formal complainant, though she had no mind to implicate *Chārudatta* in the least. In fact she had deep affection for him, and was anxious to see him declared innocent. Now *Chārudatta* was summoned to appear in court and the trial proceeded. Out of respect to his position, he was allowed a seat.

The complainant *Śakara* deposed as an eye-witness but the judge knew him to be a contemptible being and had very little confidence in his veracity.

It was at this time that one *Veeraka*, the city constable, came to court to lodge a complaint against *Chandanaka*, another constable for being kicked at as he wanted to be further satisfied by personally examining a cart as to whether *Āryyaka* lay hidden there. On enquiry from the driver, he learnt that it was *Chārudatta's* cart conveying *Basantasenā* to his garden for a pleasure trip.

Veeraka was at once sent to *Chārudatta's* garden to ascertain whether any dead body was there. He came back and reported that he had seen there the body of a woman being eaten by beasts of prey, and on being questioned as to how he knew it to be the body of a woman, he said that he knew it by the hair, the arms, hands, and legs that were not yet devoured.

The case now became very serious against *Chārudatta*, who at *Śakara's* protest, was asked to come down from his chair and sit on the ground.

It was at this time that the accused's friend *Maitreya* who was also called *Viduṣaka*, and who had been asked to return the ornaments given to *Rohasena* to *Basantasenā*, came to learn of his friend's difficulties, and entered the court room to see him. He was greatly provoked by the malicious conduct of *Śakara* whom he abused and insulted. A scuffle ensued and in the scuffle, *Basantasenā's* ornaments that were with *Maitreya* fell from his armpit.

The mother of *Basantasenā* did not like to identify the ornaments as those of her daughter but *Chārudatta* himself identified them. So the matter was cleared up.

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Chārudatta was now asked by the judge to tell the truth, or he should be severely dealt with. He was overcome with grief for *Basantasenā* and did not care to live without her. He refused to make any further statement and referred the matter to his complainant. *Śakara* taking advantage of this addressed *Chārudatta* thus:

Say, yourself, "I have killed her."

Chārudatta replied: "You yourself have said so." This was triumphantly pointed out as amounting to confession of guilt.

The accused was now declared guilty, and the case was referred to the king with a recommendation by the judge that he being a Brāhmaṇa could not be visited with capital sentence that could be inflicted on him. The king, however, ordered that the stolen ornaments of the deceased should be tied round the criminal's neck, that he should be taken to the southern execution ground with beat of drums, and there put to death by being placed on a spike. He was accordingly made over to the Chāṇḍālas (executioners).

While the accused was being carried to the execution ground the cartman who had unwittingly taken *Basantasenā* to *Śakara's* garden, and who had been kept confined by him to shut out evidence, managed to escape and came to the spot to give the truth, but the wily *Śakara* came in time to discredit him by slipping in a golden trinket into his hand by alleging that he had been confined for theft, and that what he now said was the result of malice. The accused was then carried to be executed. *Basantasenā* accompanied by the *Buddhist Bhikshu* hurried to the spot and saved him.

Meanwhile the king had been put to death by *Āryyaka*, who now ascended the throne, and was ready to pass severe sentence on *Śakara* but the latter was pardoned at the earnest request of *Chārudatta*. By the order of the new king it was announced that *Basantasenā* should be regarded as the lawful wife of *Chārudatta*.

The following interesting matters of law appear from the above mentioned case:

(1) There was a regular police establishment. There were town constables and other constables.

(2) The court constituted at least one judge, who was helped by a *Śreṣṭhī* and a *Kāyastha*. The former would act

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the part of an assessor and would put questions to witnesses and to the accused. The latter would serve as a Bench clerk, and would record everything that the judge would ask him to do.

(3) A complaint was generally lodged by a complainant, and was reduced to writing. In such cases the written words governed them. In cases where equitable reliefs were claimed the judge was to decide according to sense and not according to words.

(4) Witnesses and the accused were duly summoned by court peons.

(5) The guilt or innocence of the accused was declared by the judge. The sentence was passed by the king.

(6) Even a *Brāhmaṇa* was visited with capital sentence by the king in disregard of the laws of *Manu*.

(7) There was validation of marriages by royal decrees in cases where even the *Smṛtis* would not declare them as valid. In this case *Basantasenā* was declared by the king as the lawful wife of *Chārudatta*.

(8) From the drama, it would further appear that gambling was sanctioned by law, and gambling debts could be lawfully recovered like other debts by resorting to self-help—in the same way as a *Roman* creditor could recover his debt by a sort of *manus injectio*.

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APPENDIX II

Quotations from Viṣṇu Purāṇa

Viṣṇu Purāṇa, Ch. XVII, 32, 37, 38, 42–43, 45-46

इत्याज्ञप्ता स्ततस्तेन प्रगृहीतमहायुधाः ।
उद्यतास्तस्य नाशाय दैत्यः शतसहस्त्रशः ।३२।
भौ भौ सर्पाः दुराचारमेनमत्यन्त दुर्मतिम् ।
विषज्वाला कुलैर्वक्त्रैः सद्यौ नयत सङक्षयम् ।३७।
इत्युक्तास्ते ततः सर्पा कुहकास्तक्षकादयः ।
अदशन्त समस्तेषु गात्रेष्वतिविषोल्बणाः ।३८।
ततः स दिग्गजैर्वालो भूभृच्छिखरसन्निभैः ।
पातितो धरणी पृष्टे विषाणर्वाविपीडितः ।४२।
स्मरतस्तस्य गोविन्दमिभदन्ताः सहस्त्रशः ।
शीर्णा वक्षः स्थलं प्राप्य स प्राह पितरं ततः ।४३।
ज्वाल्यतामसुरा वहिनरपसर्पत दिग्गजाः ।
वायो समेधयाग्निं त्व दह्यतामेष पापकृत् ।४५।
महाकाष्ठचयस्थं तमसुरेन्द्रसुतं ततः ।
प्रज्वाल्य दानवा वह्निं ददहुः स्वामिनोदिताः ।४६।

Viṣṇu Purāṇa, Ch. XVIII, 4, 30-41

ते तथैव ततश्चक्रुः प्रह्लादाय महात्मने ।
विषदान यथा ज्ञप्तं पित्रा तस्य महात्मनः ।४।
यदास्मद्वचनान्मोहग्राहं न त्यक्ष्यते भवान् ।
ततः कृत्या विनाशाय तव सृक्ष्याम दुर्मते ।३०।
कः केन हन्यते जन्तुर्जन्तुः कः केन रक्ष्यते ।
हंति रक्षति चैवात्वा ह्यसत्साधु समाचरन् ।३१।
कर्मणा जायते सर्वं कर्मैव गतिसाधनम् ।
तस्मात्सर्वप्रयत्नेन साधुकर्म समाचरेत् ।३२।
इत्युक्तास्तेन ते क्रुद्धा दैत्यराजपुरोहिताः ।
कृत्यामुत्पादयामासुज्वालाज्ज्वलाकृतिम् ।३३।

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अतिभीमा समागम्य पादन्यासक्षतक्षितिः ।
शूलेन साधुमङ् क्रुद्धा त जघानशु वक्षसि ।३४।
तत्तस्य हृदय प्राप्य शूलं बालस्य दीप्तिमत् ।
जगाम खण्डितं भूमौ तत्रापि शतधा गतम् ।३५।
यत्रानपायी भगवान् हृद्यास्ते हरिरीश्वरः ।
भंगो भवति वज्रस्य तत्र शूलस्य का कथा ।३६।
अपापे तत्र पापैश्च पातिता दैत्ययाजकैः ।
तानेव सा जघानाशु कृत्या नाशं जगाम च ।३७।
कृत्यया दह्यमानां स्तान्विलोक्य स महामतिः ।
त्राहि कृष्णेत्यनंतेति वदन्नभ्यवपद्यत ।३८।
सर्वव्यापिन् जगद्रूप जगत्स्त्रष्टर्जनार्दन ।
पाहि विप्रानिमानस्माद्दुः सहान्मत्रपावकात् ।३९।
तथा सर्वेषु सर्वव्यापी जगद्गुरूः ।
विष्णुरेव तथा सर्वे जीवन्त्वेते पुरोहिताः ।४०।
यथा सर्वगत विष्णुं मयमानोऽनपायि नम् ।
चितयाम्यरिपक्षेपऽपि जीवंत्वेते पुरोहिताः ।४१।

Viṣṇu Purāṇa, Ch. XIX, 12, 17-19, 21-24, 52-62

ततस्तं चिक्षिपुः सर्वे बालं दैतेयदानवाः ।
पपात सोऽप्यधः क्षिप्तो हृदयेनोद्वहन्हरिम् ।१२।
ततः स ससृजे मायां प्रहलादे शाबरोऽसुरः ।
विनाशमिच्छन्दुर्बुद्धिः सर्वत्र समदर्शिनी ।१७।
समाहितमतिर्भूत्वा शम्बरेऽपि विमत्सरः ।
मैत्रेय सौऽपि प्रह्लादः सस्मार मधुसूदनम् ।१८।
ततौ भगवता तस्य रक्षार्थं चक्रमुत्तमम् ।
आजगाम समाज्ञप्तं ज्वालामालि सुदर्शनम् ।१९।
संशोषर्क तथा वार्यु दैत्येन्द्रस्त्वदमब्रवीत् ।
शीघ्रमेष ममादेशाद् दुरात्मा नीयतां क्षयम् ।२१।
तथेत्युक्त्वा तु सोऽप्येन विवेश पवनो लघु ।
शीतोऽतिरूक्षः शोषाय तद्हेहस्यातिदुः सहः ।२२।
तैनाविष्टमथात्मानं स बुद्ध्वा दैत्यबालकः ।
हृदयेन महात्मानं दधार धरणीधरम् ।२३।
हृदयस्थस्ततस्तस्य त वायुमतिभीषणम् ।
पपौ जनार्दनः क्रुद्धः स ययौपवतः क्षयम् ।२४।

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हे विप्रचिते हे राहो हे वलैष महार्णव्रे ।
नागपाशैद्वै र्बद्ध्वा क्षिप्यतां मा विलम्व्यताम् । २।
अन्यथा सकला लोकास्तथा दैतेयदानवाः ।
अनुयास्यन्ति मूढस्य मतमस्य दुरात्मनः ।५३।
बहुशो वारितोऽस्माभिरयं पापस्तथाप्यरेः ।
स्तुतिं करोति दुष्टानां वध एवोपकारकः ।५४।
ततस्ते सत्वरा दैत्यपा बद्ध्वा तं नागबन्धनैः ।
भर्तुराज्ञां पुरस्कृत्य चिक्षिपुः सलिलार्णवे: ।५५।
ततश्चचाल चलता प्रहलादेन महाणवः ।
उद्वेलोऽभूत्परं क्षोभमुपेत्य च समंततः ।५६।
भूर्लोकमखिलं दृष्ट्वा प्लाव्यमानं महाम्मसा ।
हिरण्ययकशिपुर्दैत्यानिदमाह महामते ।५७।
दैतेयाः सकलैः शैलैरत्रैव वरूणालये ।
निश्छिद्रैः सर्वैश्चीयतामेषदुमतिः ।५८।
नाग्निदहति नैवायं शस्त्रैश्छिन्नो न चोरगैः ।
क्षयं नीतो न वातेन न विषेण न कृत्यया ।५९।
न मायाभिनं चैवोच्चात्पातितो न च दिग्गजैः ।
वानोऽतिदुष्टचित्तोऽयं नानेनार्थोऽस्ति जीवता ।६०।
तदेष तोयमध्ये तु समाक्रान्तो महीधरैः ।
तिन्ष्ठवन्दसहस्त्रान्तं प्राणान्हास्यति दुर्मतिः ।६१।
ततो दैत्यादानवाश्च पर्वतैस्तं महौदधौ ।
आक्रम्य चयनं चक्रु योजनानि सहस्त्रशः ।६२।

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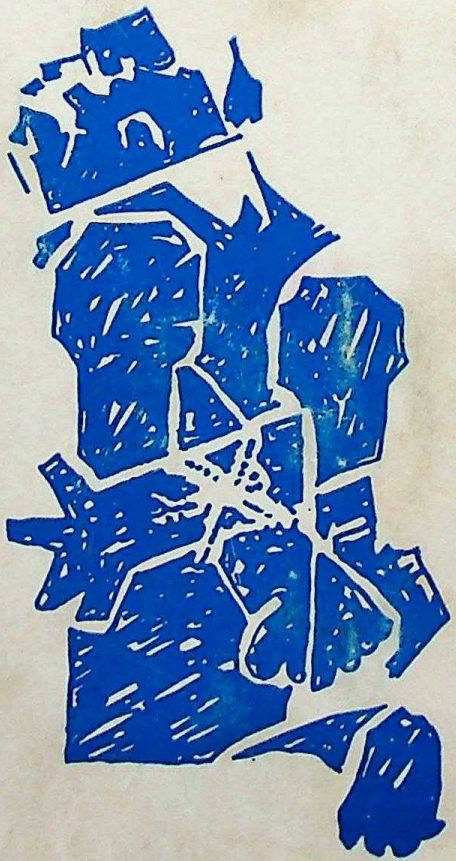
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